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Presidential Documents

Title 3—

The President

Proclamation 8672 of May 9, 2011

National Building Safety Month, 2011

By the President of the United States of America

A Proclamation

Building safety is a critical component of our homeland security, our personal and public safety, the protection of property, and our economic well-being. While disasters have had devastating and heartbreaking effects in our country and around the world, modern building safety standards and fire prevention codes help us withstand, mitigate, and rapidly recover from hurricanes, winter storms, tornadoes, earthquakes, and floods.

It is our collective responsibility as a Nation—nonprofit organizations and the public and private sectors—to implement effective standards and codes that sustain safe and resilient structures. We need innovation and partnerships at all levels of society to develop transformative breakthroughs in building materials and construction techniques that strengthen the integrity of our homes, workplaces, and commercial facilities.

Building safety and fire prevention officials, architects, engineers, design professionals, builders, and others in the construction industry work every day to ensure the sound construction of buildings and the safety of our citizens. Their efforts to construct or retrofit buildings that utilize state-of-the-art safety, energy efficiency, and fire prevention standards are important to our national resilience and our ability to compete in the 21st-century economy.

As a resilient Nation, we must continue to do everything in our power to enhance our ability to withstand and rapidly recover from natural and manmade disasters, disruptions, and emergencies.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2011 as National Building Safety Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of building safety, and I further urge Americans to learn more about how they can contribute to building safety at home and in their communities.

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

[FR Doc. 2011–11970
Filed 5–12–11; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Presidential Determination No. 2011–9 of April 26, 2011

Drawdown Pursuant to Section 552(c)(2) of the Foreign Assistance Act of 1961, as Amended, of up to $25 Million in Commodities and Services from any Agency of the United States Government for Libyan Groups, such as the Transitional National Council, to Support Efforts to Protect Civilians and Civilian-Populated Areas Under Threat of Attack in Libya

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me as President by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a (FAA), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter Six of Part II of the FAA in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter Six of Part II of the FAA.

I therefore direct the drawdown of up to $25 million in nonlethal commodities and services from the inventory and resources of any agency of the United States Government to support key U.S. Government partners such as the Transitional National Council in efforts to protect civilians and civilian populated areas under threat of attack in Libya.

The Secretary of State is authorized and directed to report this determination to the Congress, arrange for its publication in the *Federal Register,* and coordinate the implementation of this drawdown.

THE WHITE HOUSE,
WASHINGTON, April 26, 2011

[FR Doc. 2011–11963
Filed 5–12–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0031]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Coast Guard—008 Courts Martial Case Files System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security/U.S. Coast Guard system of records titled, "Department of Homeland Security/U.S. Coast Guard—008 Courts Martial Case Files System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security/U.S. Coast Guard—008 Courts Martial Case Files System of Records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective May 13, 2011.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Eileen Yenikaliotis (202–475–3530), Acting Privacy Officer, U.S. Coast Guard. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) U.S. Coast Guard (USCG) published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 73 FR 64899, October 31, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/USCG—008 Courts Martial Case Files System of Records. The DHS/USCG—008 Courts Martial Case Files system of records notice (SORN) was published concurrently in the **Federal Register**, 73 FR 64961, October 31, 2008. Comments were invited on both the NPRM and the SORN. Public comments were received on the NPRM. No comments were received on the SORN.

Public Comments

DHS/USCG received two public comments on the NPRM. The first comment focused on the rights of an individual stating that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." This system will be used by the DHS/USCG to collect and maintain records on military and civilian employees of the DHS/USCG who are tried by, or involved with, a courts martial in the DHS/USCG. By issuing these exemptions, DHS/USCG is not abdicating its duty to conduct fair and impartial courts martial proceedings. Rather, these exemptions only apply to the Privacy Act and would not limit the ability of an individual to obtain records pursuant to other authorities, such as applicable rules for courts martial.

The second public comment received focused on withholding information from a member of the DHS/USCG uniformed service as a result of the exemptions claimed in the proposed rule. Exemptions claimed in the proposed rule are neither designed nor intended, without reason, to withhold information from anyone. However, it is occasionally necessary and appropriate for the DHS/USCG to protect material compiled for law enforcement purposes, including some records pertaining to investigations, inquiries, and criminal proceedings, as well as national security and intelligence activities. No comments were received on the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.;* 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to part 5, Exemption of Record Systems under the Privacy Act, paragraph 54 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

12. The DHS/USCG—008 Courts Martial Case Files System of Records consists of electronic and paper records and will be used by DHS/USCG. The DHS/USCG—008 Courts Martial Case Files System of Records is a repository of information held by DHS/USCG in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/USCG—008 Courts Martial Case Files System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS/USCG and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Exemptions from these particular subsections are justified, on a case-

by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: April 19, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–11689 Filed 5–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–10–0072; FV10–927–1 FIR]

Pears Grown in Oregon and Washington; Amendment To Allow Additional Exemptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Adoption of interim rule as final.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that added an exemption to the marketing order for Oregon-Washington pears that provides for the sale of fresh pears directly to consumers without regard to regulation. For each customer, the interim rule provided an exemption for consumer-direct sales of up to 220 pounds of fresh pears per transaction, for home use only, made directly at orchards, packing facilities, roadside stands, or farmers' markets without regard to the marketing order's assessment, reporting, handling, and inspection requirements. This action is intended to provide increased marketing flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

DATES: Effective May 16, 2011.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Portland, Oregon; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@ams.usda.gov* or *Gary D.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/* Marketing Orders Small Business Guide; or by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter

referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of pears grown in Oregon and Washington is regulated by 7 CFR part 927. This rule continues in effect the interim rule that added an exemption for consumer-direct sales of up to 220 pounds of fresh pears per customer and transaction, for home use only, and made directly at orchards, packing facilities, roadside stands, or farmers' markets. These consumer-direct sales are exempt from the marketing order's assessment, reporting, handling, and inspection requirements. The Committee believes that the volume represented by these pear sales is insignificant and will not adversely affect the domestic and international marketing of commercial quantities of fresh pears. The majority of promotional funds collected by the Committee are utilized for large-scale promotional efforts that do not have a direct relationship or benefit to these consumer-direct sales. This exemption provides regulatory flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

In an interim rule published in the **Federal Register** on January 25, 2011, and effective on January 26, 2011, (76 FR 4202, Doc. No. AMS–FV–10–0072, FV10–927–1 IR), a new § 927.122 was added to the order's rules and regulations providing for the consumer-direct exemption.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,537 growers of fresh pears in the regulated production area and approximately 38 handlers subject to regulation under the order. Small agricultural growers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the Noncitrus Fruits and Nuts 2010 Preliminary Summary issued in January 2010 by the National Agricultural Statistics Service, the average 2009 fresh pear price of $456 per ton places the farm-gate value of fresh pears grown in Oregon and Washington at $202,053,810. Based on the number of fresh pear growers in the Oregon-Washington production area, the average gross revenue for each grower can be estimated at approximately $131,460. Furthermore, based on Committee records, the Committee has estimated that 56 percent of Northwest pear handlers currently ship less than $7,000,000 worth of fresh pears on an annual basis. From this information, it is concluded that the majority of growers and handlers of Oregon and Washington pears may be classified as small entities.

This rule continues in effect the action that exempts from regulation fresh pears that are sold directly to consumers—in quantities of 220 pounds or less per customer and transaction—at orchards, packing houses, roadside stands, and farmers' markets. This change provides small pear handlers with increased marketing flexibility while facilitating the sale of pears in local markets. Section § 927.65(b) of the order authorizes the establishment of regulations that exempt specified quantities of pears, or types of pear shipments from the order.

This action is expected to have a beneficial impact on the Northwest pear industry, especially on small growers and handlers. The Committee's goal is that this exemption will reduce overall costs to the pear industry, relax the burden on small businesses, and facilitate the distribution of fruit at the local level. The Committee believes that this action will be especially beneficial to small independent businesses because such agricultural operations tend to utilize roadside stands and farmers' markets more than do large, vertically integrated entities. The Committee has stated that the majority of pear handlers are small businesses under the SBA definition. Although this rule was recommended by the Committee with the goal of helping small pear grower handlers and handlers, it does not prevent large businesses from realizing the same benefits.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the April 22, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before March 28, 2011. No comments were received. Therefore, for the reasons given in the interim rule, USDA is adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-10-0072–0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 4202, January 25, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim rule that amended 7 CFR part 927 and that was published at 76 FR 4202 on January 25, 2011, is adopted as a final rule, without change.

Dated: May, 9, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–11714 Filed 5–12–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–11–0024; FV11–946–3IR]

Irish Potatoes Grown in Washington; Modification of the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule extends the one-year suspension of the minimum quality, maturity, pack, marking, and inspection requirements prescribed for russet potato varieties under the Washington potato marketing order for the 2011–2012 and subsequent fiscal periods. The current one-year suspension of the russet potato handling regulation ends June 30, 2011. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule also extends the reporting requirement for russet potato handlers for the purpose of obtaining information necessary for administering the marketing order. This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while allowing the industry the opportunity to continue exploring alternative marketing strategies.

DATES: Effective July 1, 2011; comments received by July 12, 2011 will be considered prior to formal adoption as a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail: Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule extends the one-year suspension of the order's handling regulation for russet potato varieties for the 2011–2012 and subsequent fiscal periods. The current one-year suspension of the russet potato handling regulation ends June 30, 2011. This action also extends the reporting requirement for russet potato handlers to obtain information necessary for the collection of assessments and statistical data. This rule allows the Washington potato industry to continue marketing russet potatoes without regard to the minimum quality, maturity, pack, marking, and inspection requirements prescribed under the Washington potato marketing order.

Section 946.52 of the order authorizes the establishment of grade, size, quality, or maturity regulations for any variety or varieties of potatoes grown in the production area. Section 946.52 also authorizes regulation of the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both. Section 946.51 further authorizes the modification, suspension, or termination of regulations issued under § 946.52. Section 946.60 provides that whenever potatoes are regulated pursuant to § 946.52 such potatoes must be inspected by the Federal State Inspection Program (FSIP), and certified as meeting the applicable requirements of such regulations.

Section 946.70 authorizes the Committee, with the approval of USDA, to require information from handlers that will enable the Committee to exercise its duties under the order.

Section 946.336 of the order's administrative rules and regulations prescribes the grade, size, quality, cleanness, maturity, pack, marking, and inspection requirements for fresh market Washington potatoes.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington potatoes which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews Committee recommendations, information submitted by the Committee, and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Committee met on June 1, 2010, and recommended suspending the minimum quality, maturity, pack, marking, and inspection requirements (handling regulation) for a one-year period. In addition, the Committee recommended that a new reporting provision be implemented to require handlers to report their russet potato shipments during this period to enable

the Committee to collect assessments and compile statistics. This information replaced similar information obtained from FSIP reports, which would not be available as a result of the suspension of the handling regulations. These recommendations were implemented by the USDA with an interim rule published in the **Federal Register** on July 23, 2010 (75 FR 43042), and finalized on December 14, 2010 (75 FR 77749).

The handling regulation was suspended temporarily so the Committee could evaluate the effects of operating without regulation, such as potential cost savings to handlers through elimination of mandatory inspection of product, and the potential market impact of operating with no mandatory quality and inspection requirements.

During the period when the temporary suspension of the handling regulation was in effect, most handlers reportedly continued to have their product inspected prior to shipment to satisfy their customer's needs and market requirements. However, since full-time inspection was not mandatory, handlers were able to coordinate the timing and utilization of inspection services to meet the needs of their individual operations, resulting in improved efficiencies and reduced costs. No negative market impacts were experienced as a result of the temporary suspension. Handlers have continued to meet their customer's specifications and needs, either with voluntary inspection or no inspection. The Committee believes that the suspension of the russet potato handling regulation, effective from July 24, 2010, through June 30, 2011, has been successful. Therefore, at its January 26, 2011, meeting, the Committee recommended extending the suspension of the handling regulation for russet potatoes for the 2011–2012 and subsequent fiscal periods. The Committee also recommended extending the reporting requirement for russet potato handlers to obtain information necessary for the collection of assessments and statistical data.

This rule permits handlers to continue shipping russet potatoes without regard to minimum quality, maturity, pack, marking, and inspection requirements for the 2011–2012 and subsequent fiscal periods. This rule also continues the reporting requirement for russet potato handlers to collect assessments and compile statistical data. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

Although this rule continues to provide russet potato handlers the opportunity to decrease their total costs by elimination of the expenses associated with mandatory inspection, it does not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of the suspension on marketing and on producer returns at future Committee meetings.

Although continuing to require handler reports, this rule, through the suspension of the handling regulation and thereby mandatory inspection, is expected to reduce overall industry expenses.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order (inclusive of the 33 russet potato handlers) and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2009–2010 fiscal period, the Committee reports that 9,765,131 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than $7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2010 was $7.55 per hundredweight. The average gross annual producer revenue for each of the 267 Washington potato producers is therefore calculated to be approximately $276,130. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule extends the one-year suspension of the handling regulation for russet potato varieties for the 2011–2012 and subsequent fiscal periods. This rule also extends the reporting requirement for russet potato handlers to obtain information necessary to administer the order. This rule is expected to reduce overall industry expenses while providing the industry with the opportunity to continue exploring alternative marketing strategies.

The authority for regulation is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70. In addition, the handling regulation and reporting requirement are specified under §§ 946.336 and 946.143, respectively, of the order's administrative rules and regulations.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will extend the one-year suspension of minimum quality, maturity, pack, marking, and inspection requirements indefinitely. Though inspections will not be mandated for russet potatoes handled under the order, handlers may at their discretion choose to have their potatoes inspected. Handlers are thus able to control costs—which are generally passed on to producers—based on the demands of their customers. The Committee reports that during the 2009–2010 fiscal period, the total cost of inspection—at $0.07 per hundredweight for the approximately 7,421,500 hundredweight of Washington russet potatoes shipped—was about $519,505. This is approximately $15,743 per handler.

The Committee discussed alternatives to this recommendation. The Committee considered suspending the handling regulation for russet potatoes for another one-year period. However, the Committee believes that the current one-year suspension has been successful and recommended extending the suspension of the handling regulation for russet potatoes indefinitely.

This rule continues the monthly reporting requirement for russet potato handlers. The reports provide the Committee with information necessary to track shipments and collect assessments. The information collection burden generated from the temporary suspension of the handling regulation (75 FR 77749) was merged into the generic vegetable package under OMB

Number 0581–0178 and continues in effect until March 31, 2014.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS 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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all committee meetings, the January 26, 2011, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Further, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on modifications to the handling regulation and reporting requirement for russet potatoes under the Washington potato marketing order. The modifications revise the introductory text of both regulations by removing a sentence in § 946.143 and by removing and replacing text in § 946.336. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective July 1, 2011, because the one-year suspension of the russet potato-handling regulation ends June 30, 2011; (2) the Committee discussed and unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 946.143 [Amended]

■ 2. Amend the introductory text of § 946.143 by removing the words "*Provided,* That the first report shall include all required information from July 24, 2010 through the end of the month in which the assessment report and its collection of information is approved by the Office of Management and Budget."

§ 946.336 [Amended]

■ 3. Amend the introductory text of § 946.336 by removing the words "from July 24, 2010, through June 30, 2011" and adding in their place the words "beginning July 1, 2011".

Dated: May 9, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–11713 Filed 5–12–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–10–0094; FV11–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2011–2012 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 694,774 pounds and 34 percent, respectively, and for Class 3 (Native) spearmint oil of 1,012,983 pounds and 44 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* This final rule becomes effective June 1, 2011, through May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail: Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington,

Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. Each producer is allotted a prorated share of the salable quantity by applying the allotment percentage to that producer's allotment base for each applicable class of spearmint oil. The producer allotment base is each producer's quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production and the accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 13, 2010, and recommended salable quantities and allotment percentages for both classes of oil for the 2011–2012 marketing year. The Committee, in a vote of six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 694,774 pounds and 34 percent, respectively. The two members opposing the action favored an undetermined greater salable quantity and allotment percentage for Scotch spearmint oil. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 1,012,983 pounds and 44 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, Oregon, and a portion of Nevada and Utah. Scotch type oil is also produced in seven other States: Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Additionally, Scotch spearmint oil is produced outside of the U.S., with China and India being the largest global competitors of domestic Scotch spearmint oil production.

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from 72 percent in 1980 to 27 percent in 2002. Recently, sales of Far West Scotch spearmint oil have risen to over 48 percent of world sales, and are expected to hold steady, or go even higher, in the coming years.

In spite of the Far West's growing share of the world market for Scotch spearmint oil, the industry has faced some stressful marketing conditions during the most recent marketing years. Spearmint oil producers experienced relatively good economic conditions in the years from 2004 through 2007, which led to overproduction and an environment of excess supply in the market beginning in 2008 and continuing through 2010. The Far West region, which produced 635,508 pounds of Scotch spearmint oil in 2004, produced 1,050,700 pounds just five years later in 2009, a 65 percent increase.

In addition to the recent oversupply concerns, the demand for Far West Scotch spearmint oil, which peaked in 2005 at 1,002,779 pounds, has experienced a steady decline to just 627,868 pounds in 2009. With production rising and sales dropping, excess inventory of uncommitted Scotch spearmint oil began to accumulate. Scotch spearmint oil carry-in (unsold salable quantity from prior years that is available for sale at the beginning of a new marketing year), which serves as a measure of oversupply in the market, grew from 23,141 pounds in 2007 to 431,028 pounds in 2010.

The Committee's response to the deteriorating marketing environment since 2008 has been to recommend the tightening of volume control regulations. The Committee, which recommended a 2008–2009 marketing year Scotch spearmint oil salable quantity of 993,067 pounds, dropped the recommendation to 802,067 pounds for the 2009–2010 marketing year, and to only 566,962 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage was reduced from 50 percent for the 2008–2009 period to 40 percent for 2009–2010, and down to just 28 percent for 2010–2011.

When the Committee met in October 2010 to consider volume regulation for the 2011–2012 marketing year, many of the previously mentioned negative marketing conditions still persisted. Even while showing some signs of incremental improvement, the current inventories, expected production, and projected demand of Scotch spearmint oil were all at levels considered unhealthy for the industry.

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2011, the primary measure of excess supply, will be approximately 197,551 pounds. That quantity, while down from the previous year's high of 431,028 pounds, will still be above what the Committee considers to be optimum.

The overproduction of Scotch spearmint oil also continues to be an area of concern for the Committee. Production of Far West Scotch spearmint oil has declined from a high of 1,050,700 pounds in 2009 to 868,487 pounds in 2010, but still remains high relative to inventory levels and anticipated demand. The recent declining trend in Scotch spearmint oil production is viewed by the Committee as a positive development for the industry. However, production will need to drop further to find balance with the current levels of demand.

In addition, spearmint oil handlers indicated that demand for Scotch spearmint oil might be gaining strength. Handlers that had projected that the trade demand for Far West Scotch oil would range from a low of 750,000 pounds to a high of 850,000 pounds for the 2010–2011 marketing year, expect the trade demand to be within a range of 800,000 pounds to 900,000 pounds for the 2011–2012 period.

However, this increase in projected Scotch demand, generally thought of as a positive indicator for the industry, is viewed cautiously by some industry participants. Consumer demand for mint flavored products is reportedly steady, providing optimism for long term increases in the demand for Far West spearmint oil. Some handlers, though, believe that the manufacturers of such products are currently increasing spearmint oil purchases just to rebuild inventories that were depleted during the worst of the recent U.S. economic recession. As such, those handlers feel that at least some of the recent increase in Scotch spearmint oil sales may not represent an actual increase in sustained demand, but a temporary response to fluctuations in the strategic inventories of the manufacturers.

Still, given the moderately improving economic indicators for the Far West Scotch spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

Therefore, at the October 13, 2010, meeting, the Committee recommended the 2011–2012 Scotch spearmint oil salable quantity of 694,774 pounds and allotment percentage of 34 percent. The Committee utilized sales estimates for 2011–2012 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at those recommendations. The volume control levels recommended by the Committee represent a 127,812 pound and 6 percentage point increase over the previous year's salable quantity and allotment percentage, reflecting a more positive assessment of the industry's economic conditions.

The Committee estimates that about 800,000 pounds of Scotch spearmint oil may be sold during the 2011–2012 marketing year. When considered in conjunction with the estimated carry-in of 197,551 pounds of Scotch spearmint oil on June 1, 2011, the recommended salable quantity of 694,774 pounds results in a total available supply of approximately 892,325 pounds of Scotch spearmint oil during the 2011–2012 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2012–2013 marketing year, which begins June 1, 2012, will be 92,325 pounds, a decrease of 105,226 pounds from the beginning of the 2011–2012 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2011—197,551 pounds.* This figure is the difference between the revised 2010–2011 marketing year total available supply of 997,551 pounds and the estimated 2010–2011 marketing year trade demand of 800,000 pounds.

(B) *Estimated trade demand for the 2011–2012 marketing year—800,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2010, as well as estimates provided by handlers and other meeting participants at the October 13, 2010, meeting. The average estimated trade demand provided at the six production area meetings is 800,000 pounds, which is 33,333 pounds less than the average of the trade demand estimates submitted by handlers. The average of Far West Scotch spearmint oil sales over the last five years is 789,243 pounds.

(C) *Salable quantity required from the 2011–2012 marketing year production—602,449 pounds.* This figure is the difference between the estimated 2011–2012 marketing year trade demand (800,000 pounds) and the estimated carry-in on June 1, 2011 (197,551 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base for the 2011–2012 marketing year—2,043,453 pounds.* This figure represents a one percent increase over the revised 2010–2011 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—29.5 percent.* This percentage is computed by dividing the minimum required salable quantity by the total estimated allotment base.

(F) *Recommended allotment percentage—34 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (29.5 percent), the average of the computed allotment percentage figures from the six production area meetings (31 percent), and input from producers and handlers at the October 13, 2010, meeting. The actual recommendation of 34 percent is based on the Committee's determination that the computed percentage (29.5 percent) may not adequately supply the potential 2011–2012 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—694,774 pounds.* This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) *Estimated available supply for the 2011–2012 marketing year—892,325 pounds.* This figure is the sum of the 2011–2012 recommended salable quantity (694,774 pounds) and the estimated carry-in on June 1, 2011 (197,551 pounds).

Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is facing market conditions that are very

similar to those affecting the Scotch spearmint oil market, although not nearly as severe. Over 90 percent of U.S. production of Native spearmint oil is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. A minor amount of domestic Native spearmint oil is produced outside of the Far West region in the States of Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India produces an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008 that share had shrunk to a low of 48 percent. Since that point, however, the percentage has rebounded and is now estimated to be over 57 percent for 2010.

In spite of the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past several marketing years. Overproduction, coupled with a decrease in demand, created a similar oversupply situation for Native spearmint oil as was previously discussed for Scotch spearmint oil. Production of Native spearmint oil in the Far West region was 701,372 pounds in 2004, but increased to 1,453,896 pounds just five years later in 2009, a 107 percent increase. In addition, over that same timeframe, demand for Native oil was moving in the opposite direction. Sales of Far West Native oil peaked in 2004 at 1,249,507 pounds. From that cyclical high, sales steadily declined over the next five years, dropping to just 976,888 pounds by 2009. As production rose and sales dropped, excess inventory of uncommitted Native spearmint oil began to accumulate. Carry-in of Native oil measured at the beginning of each marketing year, which serves as a measure of oversupply in the market, grew from 83,417 pounds at the beginning of the 2007–2008 marketing year to 343,517 pounds at the beginning of the 2010–2011 marketing year.

The Committee's response to the difficult marketing environment for Native spearmint oil over the 2008 through 2010 period was similar to the response to the situation with Scotch spearmint oil over that time, to recommend the moderate tightening of volume control regulations. The Committee, which recommended a 2008–2009 Native spearmint oil salable quantity of 1,178,946 pounds, maintained a similar recommendation for the 2009–2010 marketing year and then dropped its recommendation to 953,405 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage, which was 53 percent for the 2008–2009 and 2009–2010 periods, was recommended to be reduced to just 43 percent for 2010–2011.

Although improving, many of the negative marketing conditions present leading up to the 2010–2011 marketing year were still evident when the Committee met to consider volume regulation for the upcoming 2011–2012 marketing year. Carry-in of Native spearmint oil on June 1, 2011, is estimated to be 216,737 pounds, down from the previous year's high of 343,517 pounds, but still at a level above what the Committee believes to be optimum.

Also, production of Native spearmint oil, while showing some signs of improvement, still remains an area of concern for the Committee. Production of Far West Native spearmint oil, which declined from a high of 1,453,896 pounds in 2009 to 1,244,361 pounds in 2010, is still considered by the Committee to be high relative to the current level of demand and the excess inventory of Native spearmint oil. However, the Committee believes that the declining trend in Native spearmint oil production may continue into the 2011 season and that much of the pressure on the industry's current oversupply situation may be relieved moving forward.

In addition to an improved supply situation, demand for Far West Native spearmint oil appears to have halted its downward movement and is expected to improve in the coming year. Spearmint oil handlers, who projected that the 2010–2011 trade demand for Far West Native spearmint oil would range from a low of 1,050,000 pounds to a high of 1,200,000 pounds, have increased their projections modestly for the 2011–2012 period to a range of 1,100,000 pounds to 1,200,000 pounds.

However, similar to Scotch spearmint oil, the small increase in projected Native spearmint oil demand, generally thought of as a positive indicator for the industry, is viewed by some handlers with caution. As mentioned previously, consumer demand for mint flavored products is expected to be steady or increase slightly moving forward, which provides optimism for long term improvement in the demand for Far West spearmint oil. Some handlers, though, have reported that the manufacturers of such products may just be temporarily increasing purchases of spearmint oil to rebuild inventories that were depleted during the worst of the current U.S. economic recession. As such, the handlers believe that at least some of the recent increase in purchases do not represent an actual increase in sustained demand but, rather, a short term response to fluctuations in the strategic inventories of the manufacturers.

Given the moderately improving economic indicators for the Far West Native spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

As such, at the October 13, 2010, meeting, the Committee recommended a 2011–2012 Native spearmint oil salable quantity of 1,012,983 pounds and an allotment percentage of 44 percent. The Committee utilized sales estimates for 2011–2012 Native spearmint oil, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. The recommended volume control levels represent a 32,763 pound and a 1 percentage point increase over the previous year's salable quantity and allotment percentage. Even with these increases in the salable quantity and allotment percentages, the carry-in at the beginning of the 2012–2013 marketing year is projected to drop by 117,018 pounds.

The Committee estimates that approximately 1,130,000 pounds of Native spearmint oil may be sold during the 2011–2012 marketing year. When considered in conjunction with the estimated carry-in of 216,737 pounds of Native spearmint oil on June 1, 2011, the recommended salable quantity of 1,012,983 pounds results in a total available supply of about 1,229,719 pounds of Native spearmint oil during the 2011–2012 marketing year. The Committee estimates that carry-in of Native spearmint oil at the beginning of the 2012–2013 marketing year to be 99,719 pounds, a significant reduction from the previous year's level of 216,737 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed

Native spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2011—216,737 pounds.* This figure is the difference between the revised 2010–2011 marketing year total available supply of 1,323,737 pounds and the estimated 2010–2011 marketing year trade demand of 1,107,000 pounds.

(B) *Estimated trade demand for the 2011–2012 marketing year—1,130,000 pounds.* This estimate is established by the Committee and is based on input from producers at the seven Native spearmint oil production area meetings held in late September and early October 2010, as well as estimates provided by handlers and other meeting participants at the October 13, 2010, meeting. The average estimated trade demand provided at the seven production area meetings was 1,130,238 pounds, whereas the handler estimate ranged from 1,100,000 pounds to 1,200,000 pounds.

(C) *Salable quantity required from the 2011–2012 marketing year production—913,263 pounds.* This figure is the difference between the estimated 2011–2012 marketing year trade demand (1,130,000 pounds) and the estimated carry-in on June 1, 2011 (216,737 pounds). This is the minimum amount that the Committee believes will be required to meet the anticipated 2011–2012 Native spearmint oil trade demand.

(D) *Total estimated allotment base for the 2011–2012 marketing year—2,302,233 pounds.* This figure represents a one percent increase over the revised 2010–2011 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—39.7 percent.* This percentage is computed by dividing the required salable quantity (913,263 pounds) by the total estimated allotment base (2,302,233 pounds).

(F) *Recommended allotment percentage—44 percent.* This is the Committee's recommendation based on the computed allotment percentage (39.7 percent), the average of the computed allotment percentage figures from the seven production area meetings (39.7 percent), and input from producers and handlers at the October 13, 2010, meeting. The actual recommendation of 44 percent is based on the Committee's determination that the computed percentage (39.7 percent) may not adequately supply the potential 2011–2012 Native spearmint oil market.

(G) *The Committee's recommended salable quantity—1,012,983 pounds.* This figure is the product of the recommended allotment percentage (44 percent) and the total estimated allotment base (2,302,233 pounds).

(H) *Estimated available supply for the 2011–2012 marketing year—1,229,720 pounds.* This figure is the sum of the 2011–2012 recommended salable quantity (1,012,983 pounds) and the estimated carry-in on June 1, 2011 (216,737 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 694,774 pounds and 34 percent, and 1,012,983 pounds and 44 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal will be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

The salable quantities established by this action are not expected to cause a shortage of spearmint oil supplies. However, any unanticipated or additional market demand for spearmint oil which might develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order makes this provision for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2011–2012 marketing year may transfer such excess spearmint oil to producers who produce less than their annual allotment or, up until November 1, 2011, place it into the reserve pool to be released in the future in accordance with market needs.

This regulation is similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 42 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 51 percent. The increased costs to producers and handlers as a result of this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2011–2012 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2011–2012 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The salable quantities and allotment percentages established in this final rule allow for the anticipated needs of the market. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2011–2012 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order,

and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this volume regulation.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil production from 1980 through 2009 was about 0.23. The CV for spearmint oil grower prices was about 0.16 for that period, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 30-year average (1.89 million pounds from 1980 through 2009) and the largest crop was approximately 163 percent of the 30-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the order, can create liquidity problems for some producers. The order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks, which are increased in large production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2011–2012 marketing year for both classes of oil at 1,930,000 pounds, and that the expected combined carry-in will be 414,288 pounds. This results in a combined required salable quantity of 1,515,712 pounds. With volume control, sales by producers for the 2011–2012 marketing year will be limited to 1,707,757 pounds (the salable quantity for both classes of spearmint oil).

The allotment percentages, upon which 2011–2012 producer allotments are based, are 34 percent for Scotch and 44 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.89 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation in the spearmint oil market that would exist without volume controls in 2011–2012 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

After computing the initial 29.5 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Considered levels ranged from 30 percent to 40 percent. Given the moderately improving marketing conditions for spearmint oil, there was consensus that the allotment percentage for Scotch spearmint oil for 2011–2012 marketing year should be more than the percentage established for 2010–2011 (28 percent). After considerable discussion, in a vote of six members in favor and two members opposed, the Committee determined that 694,774 pounds and 34 percent is the most effective salable quantity and allotment percentage, respectively, for the 2011–2012 marketing year. The two dissenting members felt that the salable quantity and allotment percentage should be set at some unidentified higher level.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 39.7 percent, the Committee voted unanimously to recommend 1,012,983 pounds and 44 percent for the effective salable quantity and allotment percentage, respectively, for the 2011–2012 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

If there were no regulations in effect for the coming marketing year, the Committee believes that the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2011–2012 would decline substantially below current levels.

According to the Committee, the established salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS 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.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 13, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 4, 2011 (76 FR 11971). Copies of the rule were provided to Committee staff, which in turn made it available to all Far West spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 4, 2011, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.230 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.230 Salable quantities and allotment percentages—2011–2012 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2011, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 694,774 pounds and an allotment percentage of 34 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,012,983 pounds and an allotment percentage of 44 percent.

Dated: May 9, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–11716 Filed 5–12–11; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

[Docket No.: SBA–2011–0013]

8(a) Business Development Program Regulation Changes; Tribal Consultation

AGENCY: U.S. Small Business Administration.

ACTION: Notice of tribal consultation meetings; request for comments.

SUMMARY: On February 11, 2011, the U.S. Small Business Administration (SBA or Agency) published a final rule in the **Federal Register** making changes to the regulations governing the section 8(a) Business Development (BD) program. SBA announces that it is holding tribal consultation meetings in Milwaukee, Wisconsin and Anchorage, Alaska to discuss the recent changes to the 8(a) BD program regulations, specifically to take comments on the mandatory reporting of community benefits provision scheduled to take effect on September 9, 2011, unless SBA further delays implementation through publication in the **Federal Register**. Testimony presented at these tribal consultation meetings will become part of the administrative record for SBA's consideration when the Agency deliberates on approaches to tracking community benefits.

DATES: Comments are requested on or before June 8, 2011.

The Tribal Consultation meetings will be held on Wednesday, June 15, 2011, from 1 p.m. to 4 p.m. at the National Congress of American Indian Mid Year Conference in the Hyatt Regency in Milwaukee, Wisconsin and on Thursday, June 23, 2011, from 1 p.m. to 4 p.m. at the National 8(a) Association Summer Conference in the Dena'ina Civic and Convention Center in Anchorage, Alaska 99501.

The tribal consultation meeting pre-registration deadline date is June 8, 2011 at 5 p.m. (Eastern Standard Time) for the Milwaukee location and June 16, 2011 at 5 p.m. (Eastern Standard Time) for the Anchorage location.

ADDRESSES: You may submit comments, identified by Docket Number SBA–2011–0013 using the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Identify comments by "Docket Number SBA–2011–0013, 8(a) Business Development program Regulation Changes; Tribal Consultation," and follow the instructions for submitting comments.

Mail: U.S. Small Business Administration, Office of Business Development, 490 3rd Street, SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit information to Ms. LaTanya Wright, Senior Advisor for Office of Business Development, 490 3rd Street, SW., Washington, DC 20416. Highlight the information that you consider to be CBI, and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

1. The Milwaukee Tribal Consultation meeting address is the Hyatt Regency, 333 West Kilbourn Avenue, Milwaukee, WI 53203.

2. The Anchorage Tribal Consultation address is the Dena'ina Civic and Convention Center, 600 W. 9th Avenue, Anchorage, AK 99501.

3. Send pre-registration requests to attend and/or testify to Ms. Chequita Carter, Office of Native American Affairs, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; by email; *chequita.carter@sba.gov* or by facsimile to (202) 205–6139.

FOR FURTHER INFORMATION CONTACT: If you have questions on SBA's Final Rule for the 8(a) BD program, call or e-mail Ms. LaTanya Wright, Senior Advisor, Office of Business Development, at (202) 205–5852, or *LaTanya.Wright@sba.gov.* If you have questions about registering or attending the tribal consultation, please contact Ms. Chequita Carter at

(202) 205–7364 or email *chequita.carter@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 11, 2011 (76 FR 8222), SBA issued a Final Rule, publicly available at *http://www.gpo.gov/fdsys/pkg/FR-2011-02-11/pdf/2011-2581.pdf.* In that document, SBA made changes to the regulations governing the 8(a) BD program regulations, its small business size regulations, and regulations affecting Small Disadvantaged Businesses (SDBs). Some of the changes involve technical issues. Other changes are more substantive and result from SBA's experience in implementing 8(a) BD program regulations. One change is the addition of new reporting requirements for 8(a) Participants. Specifically, the final rule requires those 8(a) Participants owned by ANCs, tribes, NHOs, and CDCs to submit overall information relating to how 8(a) participation has benefited the tribal or native members and/or the tribal, native or other community as part of each Participant's annual review submissions, including information about funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community.

SBA received several comments recommending it delay implementation of any reporting of benefits requirement to allow affected firms to gather and synthesize this data. In addition, these commenters encouraged SBA to establish a task force, comprised of native leaders and SBA, to further study how this requirement could be best implemented without imposing an undue burden on tribes, ANCs, NHOs or CDCs, or on their affected 8(a) Participants. SBA agreed and delayed implementation of new § 124.604 for six months after the effective date for the other provisions of the final rule. These tribal consultations are for the purpose of developing best practices for collecting and utilizing the data. SBA expects that two Participants owned by the same tribe, ANC, NHO or CDC will submit identical data describing the benefits provided by the tribe, ANC, NHO or CDC.

II. Tribal Consultation Meetings

The purpose of these tribal consultation meetings is to conform to the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments"; to provide interested parties with an opportunity to discuss the 8(a) BD program regulatory changes; and for SBA to obtain the comments of SBA's stakeholders on approaches to tracking community benefits. In addition to general oral and written comments about 8(a) BD program provisions, SBA is requesting oral and written comments on approaches to tracking community benefits as required by the 8(a) BD program regulations. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that these tribal consultation meetings will allow for constructive dialogue with the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives.

The format of these tribal consultation meetings will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony.

SBA requests that the comments address possible formats which the information should be transmitted to SBA and whether the data should be submitted at the time of the annual review (Participant's anniversary) or if another time in the year, such as the fiscal or calendar year, is better. In order to better report the data SBA is considering revisions to SBA Form 1450 for uniform reporting. One method SBA is considering is using a data list supported by a narrative format. The list would comprise of hard data and a narrative explaining the significance in benefits flowing to the community. SBA requests that commenters discuss the proposed methodology and offer any alternatives.

SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. The purpose of the tribal consultation is to discuss changes to the new reporting requirements for 8(a) BD program Participants owned by tribes, ANCs, NHOs and CDCs with the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives and to seek their comments on approaches to tracking community benefits. SBA requests that the comments focus on the new regulatory changes as stated in the Agency's Final Rule and commenters not raise issues pertaining to other SBA small business programs.

Presenters may provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

The tribal consultation meetings will be held for half a day. The Milwaukee meeting will begin at 1 p.m. and end at 4 p.m. The Anchorage meeting will begin at 1 p.m. and end at 4 p.m. SBA will adjourn early if all those scheduled have delivered their testimony.

III. Registration

SBA respectfully requests that an elected or appointed representative of the tribal communities that are interested in attending please pre-register in advance and indicate whether you would like to testify at the hearing. Registration requests should be received by SBA by June 8, 2011 at 5 p.m. (Eastern Standard Time) for Milwaukee and June 16, 2011 at 5 p.m. (Eastern Standard Time) for Anchorage. Please contact Ms. Chequita Carter in SBA's Office of Native American Affairs in writing at *Chequita.Carter@sba.gov* or by facsimile at (202) 205–6139.

If you are interested in testifying, please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, E-mail address and Fax number. SBA will attempt to accommodate all interested parties who wish to present testimony. Based on the number of registrants, it may be necessary to impose time limits to ensure that everyone who wishes to testify has the opportunity to do so. SBA will confirm in writing the registration of presenters and attendees.

IV. Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the tribal consultation meeting, contact Ms. Chequita Carter at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 15 U.S.C. 632, 634(b) (6), 636(b), 637(a), 644 and 662 (5); Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592; and, E.O. 13175, 65 FR 67249.

Dated: May 6, 2011.

Clara Pratte,

National Director for the Office of Native American Affairs.

[FR Doc. 2011–11712 Filed 5–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0185; Directorate Identifier 2011–CE–002–AD; Amendment 39–16694; AD 2011–10–13]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG Airplanes

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

ACTION: Final rule.

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

Since 2004, more than 30 reports have been received of in-flight loss of a rear passenger door on Diamond aeroplanes, the majority of which were DA 40. In additional, at least 18 doors have been replaced because of damage found on the hinge.

Diamond Aircraft Industries conducted analyses and structural tests to determine the root cause of the door opening in flight. The conclusions were that the primary locking mechanism provided adequate strength to react to the loads in flight. It was also determined that the root cause was the crew not properly securing the rear passenger door by the main locking mechanism, prior to flight. Damage to the hinges has been caused primarily by external loads (wind gust conditions) while the aeroplane was parked.

All DA 40 and DA 42 aeroplanes have a system installed that provides a warning if the main door latch is not fully closed and a secondary safety latch (with retaining bracket) design feature. The initial intended design function of the latch was to hold the rear passenger door in the "near closed" position while on the ground, protecting the door from wind gusts. However, the original retaining bracket Part Number (P/N) DA4–5200–00–69 might not hold the door in this "near closed" position while in flight. * * *

This condition, if not corrected, could result in the rear passenger door opening and departing the aeroplane in flight.

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

DATES: This AD becomes effective June 17, 2011.

On June 17, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, *telephone:* +43 2622 26700; *fax:* +43 2622 26780; e-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090; *e-mail: mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 8, 2011 (76 FR 12627). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Since 2004, more than 30 reports have been received of in-flight loss of a rear passenger door on Diamond aeroplanes, the majority of which were DA 40. In additional, at least 18 doors have been replaced because of damage found on the hinge.

Diamond Aircraft Industries conducted analyses and structural tests to determine the root cause of the door opening in flight. The conclusions were that the primary locking mechanism provided adequate strength to react to the loads in flight. It was also determined that the root cause was the crew not properly securing the rear passenger door by the main locking mechanism, prior to flight. Damage to the hinges has been caused primarily by external loads (wind gust conditions) while the aeroplane was parked.

All DA 40 and DA 42 aeroplanes have a system installed that provides a warning if the main door latch is not fully closed and a secondary safety latch (with retaining bracket) design feature. The initial intended design function of the latch was to hold the rear passenger door in the "near closed" position while on the ground, protecting the door from wind gusts. However, the original retaining bracket Part Number (P/N) DA4–5200–00–69 might not hold the door in this "near closed" position while in flight. To address this problem, DAI have designed an improved retaining bracket, P/N DA4–5200–00–69–SB, which has been satisfactory tested to hold the door closed in flight. In addition, DAI have revised the Airplane Flight Manual (AFM) emergency door unlocked/open procedure.

This condition, if not corrected, could result in the rear passenger door opening and departing the aeroplane in flight.

For the reasons described above, this AD requires implementation of amendment of the AFM procedures for flight with the door unlocked/open, and replacement of the passenger door retaining bracket with an improved part.

You may obtain further information by examining the MCAI in the AD docket.

The MCAI covers Diamond Aircraft Industries GmbH Models DA 40 and DA 40F, DA 42, DA 42 NG, and DA 42 M–NG airplanes. Before the FAA received the MCAI, on November 23, 2010, we issued AD 2010–25–01, Amendment 39–16534 (75 FR 75868, December 7, 2010), as a unilateral action to address this unsafe condition on Models DA 40 and DA 40F airplanes. Since AD 2010–25–01 already addresses this unsafe condition on Models DA 40 and DA 40F airplanes, we are not including those models in this AD.

Before we issued AD 2010–25–01, we received a comment on the notice of proposed rulemaking (NPRM) requesting that, due to common operating practice of leaving the front canopy open during taxi operations, the front canopy latch sensor be disconnected from the 'door open' annunciation. This would allow illumination only when the rear door was not properly latched to alert the pilot to the unsafe condition. In that NPRM, the FAA stated that further analysis was being done.

At this time, we believe the actions required in AD 2010–25–01 adequately address the unsafe condition on Models DA 40 and DA 40F airplanes and the similar actions in this AD address the unsafe condition on Models DA 42, DA 42–NG, and DA 42 M–NG airplanes.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 162 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $71 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $39,042 or $241 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–13 Diamond Aircraft Industries GmbH: Amendment 39–16694; Docket No. FAA–2011–0185; Directorate Identifier 2011–CE–002–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 17, 2011.

Affected ADs

(b) AD 2010–25–01 addresses this same condition on Diamond Aircraft Industries GmbH Models DA 40 and DA 40F airplanes.

Applicability

(c) This AD applies to Diamond Aircraft Industries GmbH Models DA 42, DA 42–NG, and DA 42 M–NG airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 52: Doors.

Reason

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

Since 2004, more than 30 reports have been received of in-flight loss of a rear passenger door on Diamond aeroplanes, the majority of which were DA 40. In addition, at least 18 doors have been replaced because of damage found on the hinge.

Diamond Aircraft Industries conducted analyses and structural tests to determine the root cause of the door opening in flight. The conclusions were that the primary locking mechanism provided adequate strength to react to the loads in flight. It was also determined that the root cause was the crew not properly securing the rear passenger door by the main locking mechanism, prior to flight. Damage to the hinges has been caused primarily by external loads (wind gust conditions) while the aeroplane was parked.

All DA 40 and DA 42 aeroplanes have a system installed that provides a warning if the main door latch is not fully closed and a secondary safety latch (with retaining bracket) design feature. The initial intended design function of the latch was to hold the rear passenger door in the "near closed" position while on the ground, protecting the door from wind gusts. However, the original retaining bracket Part Number (P/N) DA4–5200–00–69 might not hold the door in this "near closed" position while in flight. To address this problem, DAI have designed an improved retaining bracket, P/N DA4–5200–00–69–SB, which has been satisfactory tested to hold the door closed in flight. In addition, DAI have revised the Airplane Flight Manual (AFM) emergency door unlocked/open procedure.

This condition, if not corrected, could result in the rear passenger door opening and departing the aeroplane in flight.

For the reasons described above, this AD requires implementation of amendment of the AFM procedures for flight with the door unlocked/open, and replacement of the passenger door retaining bracket with an improved part.

Actions and Compliance

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

(1) Within 6 months after June 17, 2011 (the effective date of this AD), incorporate Diamond Aircraft Temporary Revision TR–MÄM 42–443, pages 3–55a and 3–55b, dated June 17, 2010, into the FAA-approved airplane flight manual following Diamond Aircraft Temporary Revision TR–MÄM 42–443, Cover Page, dated June 17, 2010.

(2) Within 6 months after June 17, 2011 (the effective date of this AD), replace the rear passenger door retaining bracket with an improved design retaining bracket following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–083/No. MSB 42NG–014, dated July 13, 2010; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–083/WI–MSB 42NG–014, dated July 13, 2010.

(3) As of 6 months after June 17, 2011 (the effective date of this AD), do not install a part

number DA4–5200–00–69 rear passenger door retaining bracket.

FAA AD Differences

Note : This AD differs from the MCAI and/or service information as follows: On November 23, 2010, we issued AD 2010–25–01 as a unilateral action to address this unsafe condition on Diamond Aircraft Industries GmbH Models DA 40 and DA 40F airplanes. The European Aviation Safety Agency (EASA) issued AD 2010–0235 to address the same unsafe condition on both DA 40 and DA 42 series airplanes. Since AD 2010–25–01 already addresses this unsafe condition on Models DA 40 and DA 40F airplanes, we are not including those models in this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA AD 2010–0235, dated November 10, 2010; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–083/No. MSB 42NG–014, dated July 13, 2010; Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–083/WI–MSB 42NG–014, dated July 13, 2010; and Diamond Aircraft Temporary Revision TR–MÄM 42–443, pages 3–55a and 3–55b, dated June 17, 2010, for related information.

Material Incorporated by Reference

(i) You must use Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–083/No. MSB 42NG–014, dated July 13, 2010; Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–083/WI–MSB 42NG–014, dated July 13, 2010; and Diamond Aircraft Temporary Revision TR–MÄM 42–443, pages 3–55a and 3–55b, dated June 17, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, *telephone:* +43 2622 26700; *fax:* +43 2622 26780; *e-mail: office@diamond-air.at; Internet: http://www.diamond-air.at.*

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

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

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Kansas City, Missouri, on May 3, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11267 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0390; Directorate Identifier 2011–NM–064–AD; Amendment 39–16696; AD 2011–10–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–112, A319–111, A319–112, A319–115, A319–132, A319–133, A320–214, A320–232, A320–233, A321–211, A321–213, and A321–231 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 the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Electrical discontinuity has been detected on terminal modules Part Number (P/N) NSA 937901M1604, manufactured by Deutsch, due to an insufficient crimping of the female contacts on the shunt, caused by a wrong setting of the crimping tool.

* * * * *

This condition, if not corrected, could potentially result in in-flight failure of the Electrical Flight Control System (EFCS) and consequent loss of control of the aeroplane. In addition, this condition could lead to a non detected passenger oxygen loss, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 31, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 31, 2011.

We must receive comments on this AD by June 27, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0054, dated March 24, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Electrical discontinuity has been detected on terminal modules Part Number (P/N) NSA 937901M1604, manufactured by Deutsch, due to an insufficient crimping of the female contacts on the shunt, caused by a wrong setting of the crimping tool.
>
> The investigations revealed that this manufacturing quality deficiency is related only to modules P/N NSA 937901M1604 with manufacturing date codes 08–14 and 08–18.
>
> This condition, if not corrected, could potentially result in in-flight failure of the Electrical Flight Control System (EFCS) and consequent loss of control of the aeroplane. In addition, this condition could lead to a non detected passenger oxygen loss, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.
>
> For the reasons described above, this [EASA] AD requires the identification and replacement of the affected terminal modules. This [EASA] AD also prohibits the installation of the affected modules on any aeroplane as replacement parts.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–92A1072, including Appendix 01, dated March 13, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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.

Differences Between the AD and the MCAI or Service Information

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

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

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 a discrepant terminal module could potentially result in an in-flight failure of the EFCS, resulting in loss of control of the airplane. In addition, a discrepant terminal module could lead to latent failure of the passenger oxygen supply, and consequent loss of oxygen supply to the masks in the event of an emergency. 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–2011–0390; Directorate Identifier 2011–NM–064–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 AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–15 Airbus: Amendment 39–16696. Docket No. FAA–2011–0390; Directorate Identifier 2011–NM–064–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 31, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–112, A319–111, A319–112, A319–115, A319–132, A319–133, A320–214, A320–232, A320–233, A321–211, A321–213, and A321–231 airplanes, certificated in any category, manufacturer serial numbers (MSN) 3603, 3605, 3607, 3610, 3613, 3615 to 3619 inclusive, 3622 to 3627 inclusive, 3629, 3631 to 3634 inclusive, 3636, 3639, 3645, 3647, 3653, 3655, 3657, 3660, 3661, 3663, 3671, 3675, 3687, 3689, 3691, 3694, 3696, 3700, 3702, 3704 and 3705.

Subject

(d) Air Transport Association (ATA) of America Code 92: Electric and Electronic Common Installation.

Reason

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

Electrical discontinuity has been detected on terminal modules Part Number (P/N) NSA 937901M1604, manufactured by Deutsch, due to an insufficient crimping of the female contacts on the shunt, caused by a wrong setting of the crimping tool.

* * * * *

This condition, if not corrected, could potentially result in in-flight failure of the Electrical Flight Control System (EFCS) and consequent loss of control of the aeroplane. In addition, this condition could lead to a non detected passenger oxygen loss, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

Compliance

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

Actions

(g) Within 600 flight hours after the effective date of this AD, identify the manufacturing date code of each Deutsch module part number (P/N) NSA 937901M1604 installed on the airplane, which can be installed on electronics rack 103VU, pylon harnesses, S15/19 harnesses and/or electronics rack 80VU, as applicable. If any module with manufacturing date code 08–14 is installed on the electronics rack 103VU, pylon harnesses, or S15/19 harnesses; or if any module with manufacturing date code 08–14 or 08–18 is installed on the electronics rack 80VU; as applicable: Before further flight, replace each affected module with a serviceable part having the same part number but a different date code, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92A1072, dated March 13, 2009.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, a Deutsch module P/N NSA 937901M1604 with a manufacturing date code of 08–14 or 08–18.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI prohibits installation of the part identified in paragraph (h) of this AD after accomplishing the actions specified in paragraph (g) of this AD, but this AD prohibits installation of the part as of the effective date of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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 refer to this AD.

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

Related Information

(j) Refer to MCAI EASA Airworthiness Directive 2011–0054, dated March 24, 2011; and Airbus Service Bulletin A320–92A1072, dated March 13, 2009; for related information.

Material Incorporated by Reference

(k) You must use Airbus Service Bulletin A320–92A1072, excluding Appendix 01, dated March 13, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

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

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

Issued in Renton, Washington, on April 28, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11331 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1101; Directorate Identifier 2009–CE–013–AD; Amendment 39–16690; AD 2011–10–09]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 150, 152, 170, 172, 175, 177, 180, 182, 185, 188, 190, 195, 206, 207, 210, T303, 336, and 337 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for Cessna Aircraft Company (Cessna) 150, 152, 170, 172, 175, 177, 180, 182, 185, 188, 190, 195, 206, 207, 210, T303, 336, and 337 series airplanes. That AD currently requires repetitive inspections and replacement of parts, if necessary,

of the seat rail and seat rail holes; seat pin engagement; seat rollers, washers, and axle bolts or bushings; wall thickness of roller housing and the tang; and lock pin springs. This new AD requires retaining all of the actions from the previous AD and adding steps to the inspection procedures in the previous AD. This AD was prompted by added steps to the inspection procedures, added revised figures, and clarification of some of the existing steps. We are issuing this AD to prevent seat slippage or the seat roller housing from departing the seat rail, which may consequently cause the pilot/copilot to be unable to reach all the controls. This failure could lead to the pilot/copilot losing control of the airplane.

DATES: This AD is effective June 17, 2011.

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: Gary Park, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4123; fax: (316) 946–4107; e-mail: *gary.park@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 87–20–03 R2, Amendment 39–6669 (55 FR 36264, September 5, 1990; published as Docket No. 86–CE–71–AD, Amdt. 39–6669). That AD applies to the specified products. AD 87–20–03 R2 requires repetitive inspections and replacement of parts, if necessary, of the seat rail and seat rail holes; seat pin engagement; seat rollers, washers, and axle bolts or bushings; wall thickness of roller housing and the tang; and lock pin springs. The NPRM published in the **Federal Register** on November 8, 2010 (75 FR 68543). That NPRM proposed to retain all of the actions from the previous AD and add steps to the inspection procedures in the previous AD.

The additional steps involve inspections of the tang thickness and length on the seat roller housing. We also provided improved graphics for inspecting seat track hole wear and for inspecting proper seat lock pin engagement depth. We itemized the steps, in sequence, to provide clearer guidance for the inspector to do the inspections.

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.

Request Change to Compliance Time

D.A., Ken Anderson, Don Barley, Timothy J. Berg, Joseph Carter, Gary W. Cleveland, Clifford Coy, Al Dyer, John M. Efinger, Greg Felton, Berry Gablin, Howard Greenberg, Steve James, Richard Koril, Michael Minton, Dustin J. Radford, Marc Stancy, Charles L. Trunck, and Walter Wasowski requested we change the inspection compliance time to annual inspections. They think that 100-hour time-in-service inspections are an excessive burden on manpower and an added expense with little benefit in safety. They also think the frequent inspections would be difficult to monitor.

We disagree with this comment. The unsafe condition of excessive wear results from usage, not calendar time. The more an airplane is used, the more likely wear will develop, causing an unsafe condition. Parts cost will not be incurred unless the inspection results require parts replacement. FAA regulations require posting compliance to ADs in the aircraft logbook. The maintainer should record compliance with this AD, which includes the 100-hour inspections, in the aircraft logbook.

We have not changed this final rule AD action based on this comment.

Request Change to Applicability Based on Secondary Seat Stops

Joseph Carter, Greg Felton, Donald L. Griffith, and Richard M. Warner requested we change the applicability based on the installation of inertial reel secondary seat stops. They think that if the primary seat lock fails and the seat slips, the secondary seat stops provide additional safety.

We partially agree with this comment. We agree that the secondary seat stop provides additional safety for seat slippage. However, we disagree that secondary seat stops provide adequate safety for the unsafe condition associated with this AD action. The secondary seat stops may be installed only on one side of the airplane, so the pilot could occupy a seat without a secondary seat stop. Also, secondary seat stops will not prevent the seat from lifting off the seat track.

We have not changed this final rule AD action based on this comment.

Request To Remove Models 150, 152, and 188 From Applicability

Mark Stancy requested we remove Cessna Models 150, 152, and 188 from the airplane Applicability. He thinks the seat travel for those models is too limited to justify this AD even if the locking pin were to slip.

We disagree with this comment. Even a limited seat travel could affect short pilots' ability to reach the controls if the seat slips backwards due to failure of the seat system. This AD action not only requires inspections to prevent seat slippage but also requires inspections to prevent the seat from lifting off the seat track.

We have not changed this final rule AD action based on this comment.

Request Withdrawal of Proposed AD Action

David Abler, Brian A. Andrus, James Barbee, Timothy J. Berg, Al Dyer, John M. Efinger, Berry Gamblin, Donald L. Giffith, Michael Minton, Robert J. Pasch, Dustin J. Radford, Charles L. Trunck, and Walter Wasowski requested we withdraw the proposed AD action because they think it adds no additional safety than AD 87–20–03 R2.

We disagree with this comment. This AD action provides additional measurements in the inspections, more clarity in the descriptions of the required inspections, and provides improved graphics. Inadvertent seat movement continues to be reported. Also, we received a report of a seat separating from the seat track due to wear of the seat roller housing tangs.

We have not changed this final rule AD action based on this comment.

Request Additional Inspection With Diagrams

One commenter requested we add an inspection of the seat stop with diagrams showing potential damage because if the integrity of the seat stop is retained, seat slippage will not occur. The commenter also requested we not allow repair to the seat roller housing.

We partially agree with this comment. We agree the seat stop should prevent seat slippage; however, other failure modes can cause seat slippage even with a functional seat stop. Providing

diagrams of possible damage to the seat stop area will not sufficiently eliminate the safety issue. Service history has shown that wear and damage to the seat installation components must be addressed. This AD action provides clarification to the inspections for those components.

We have not changed this final rule AD action based on this comment.

Request an Additional Measurement to the Inspection

Dave McFarlane requested we add a maximum allowable incremental 0.07-inch radius dimension to figure 1 at the outside diameter dimensions for clarification.

We disagree with this comment. The measurement dimensions in figure 1 adequately address the measurements necessary for this AD. Additional measurements will not provide any additional benefit.

We have not changed this final rule AD action based on this comment.

Request Changing Compliance Based on Frequency of Seat Movement

Joseph Carter requested we change the compliance time for the inspection for seats that are moved infrequently because they would not experience the same amount of wear on the seat components.

We disagree with this comment. Inspectors would not be able to determine the frequency seat movement.

We have not changed this final rule AD action based on this comment.

Request Change to the Measurement of the Tangs

Brian A. Andrus, Jim Currie, and Jerry Unruh requested we change the tang measurement to the outside of the seat roller housing and change the description of the tang measurement. This change would make it easier for the inspector to take the measurement and to better understand what is being measured.

We agree with this comment. We agree that measuring the tang length inside of the roller housing is difficult because of the presence of the rollers inside of the roller housing.

We have changed the callouts in figure 4 to measure the tang length from outside of the roller housing instead of from inside of the roller housing. We have also changed the description of the tang measurement in figure 4 to more accurately describe the measurement.

Request Detailed Description of Changes From AD 87–20–03 R2

Robert J. Pasch requested we better describe the changes or added steps to the inspections from AD 87–20–03 R2 so the owner/operator can better understand the requirements of this new AD action.

We agree with this comment. We retained all of the actions from the previous AD and added steps to the inspection. This AD action must be complied with in its entirety, not just the added steps. This AD action includes better descriptions and graphics for the mechanic to follow when complying with this AD. We have added language to the Discussion section describing in more detail the changes we made in this superseding AD action.

Request Different Requirements for New Seat Rail Installations

Howard Greenberg requested different requirements for new seat rail installations.

We disagree with this comment. Documentation positively identifying that all seat assemblies and associated parts were replaced would be difficult to obtain. If documentation positively identifying replacement of the seat assemblies and associated parts can be found, the FAA will consider any applications we receive for an alternative method of compliance to extend the compliance time for the initial inspection.

We have not changed this final rule AD action based on this comments.

Request Training on Proper Seat Operation Instead of AD

David Abler, Ken Anderson, and Timothy J. Berg requested we provide a means to educate the pilots on proper operation of the seats rather than take AD action.

We disagree with this comment. Wear and damage can occur, which may not be visibly recognizable by the pilot, and may cause the seat to slip even after proper engagement of the locking pin. In addition, many sources exist to educate those involved about this unsafe condition, including Advisory Circular 43–16A, Aviation Maintenance Alerts, found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/Frameset?OpenPage;* Special Aviation Information Bulletin, SAIB CE–09–10, Availability of Secondary Seat Stops for Pilot and Copilot Seats found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSAIB.nsf/Frameset?OpenPage*; Safety Alerts for Operators, SAFO 10016, Missing or Improper Seat Stops in Cessna Models found on the Internet at *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/*; and other related articles in Cessna Pilots Association Magazine. In spite of the sources of information regarding the necessity for proper maintenance and proper operations of the seats, inadvertent seat movement continues to be a safety issue.

We have not changed this final rule AD action based on this comment.

Request Requiring Reinspection After Repair or Replacement of Parts

An anonymous commenter requested we require verifying the seat stop pin engagement still meets the 0.150 inch criteria after replacement of parts as a result of any of the required inspections.

We disagree with this comment. The intent of this inspection is to detect wear or deformation. Any part used as a replacement part must be serviceable and not show signs of wear or deformation. Also, this inspection is a repetitive inspection at intervals not to exceed every 100 hours time-in-service.

We have not changed the final rule AD action based on this comment.

Agreement With AD Action

John M. Conti agrees with this AD action. He states the added procedures and criteria are good and must be done during annual inspections so the extra detail is a small price to pay that will further reduce this risk.

We have not changed this final rule AD action based on this comment.

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 change described previously to change the tang length measurement location to outside of the seat roller housing and minor editorial changes. We have determined that these minor changes:

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

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

Costs of Compliance

We estimate that this AD will affect 36,000 airplanes in the U.S. registry.

The estimated total cost on U.S. operators includes the cumulative costs associated with AD 87–20–03 R2. The required actions of this AD are the same

as in AD 87–20–03 R2 with the exception of some added steps to the inspection, which do not increase work-hours. The increased estimated cost of this AD is due to increased labor cost and parts cost from 1987 when AD 87–20–03 R2 was issued.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections of the seat roller housings and seat rail.	1 work-hour × $85 per hour = $85	Not applicable	$85	$3,060,000

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace seat rail	2 work-hours × $85 per hour = $170 per rail	$225 per rail	$395
Replace seat roller kit	2 work-hours per seat (less per leg) × $85 per hour = $170.	$110	280
Replace miscellaneous parts, such as seat rollers, washers, bushings, bolts, lock pin springs, etc.	1 work-hour per seat × $85 per hour = $85	$15	100

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, 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) 87–20–03 R2, Amendment 39–39–6669 (55 FR 36264, September 5, 1990; published as Docket No. 86–CE–71–AD, Amdt. 39–6669), and adding the following new AD:

2011–10–09 Cessna Aircraft Company: Amendment 39–16690; Docket No. FAA–2010–1101; Directorate Identifier 2009–CE–013–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 17, 2011.

Affected ADs

(b) This AD supersedes AD 87–20–03 R2, Amendment 39–6669.

Applicability

(c) This AD applies to all serial numbers of the following Cessna Aircraft Company (Cessna) Models that are certificated in any category:

Models
(1) 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FA150M, FRA150L, and FRA150M.
(2) 152, A152, F152, and FA152.
(3) 170, 170A, and 170B.

Models
(4) 172, 172A, 172B, 172C, 172D, 172E, 172F (USAF T–41A), 172G, 172H (USAF T–41A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172RG, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, P172D, R172E (USAF T-41B) (USAF T–41C and D), R172F (USAF T–41D), R172G (USAF T–41C or D), R172H (USAF T–41D), R172J, and R172K.
(5) 175, 175A, 175B, and 175C.
(6) 177, 177A, 177B, 177RG, and F177RG.
(7) 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, and 180K.
(8) 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, R182, T182, and TR182.
(9) 185, 185A, 185B, 185C, 185D, 185E, A185E, and A185F.
(10) 188, 188A, A188, A188A, 188B, A188B, and T188C.
(11) 190.
(12) 195, 195A, and 195B.
(13) 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, U206, U206A, U206B, U206C, U206D, U206E, U206F, and U206G.
(14) 207, 207A, T207, and T207A.
(15) 210, 210–5 (205), 210–5A (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, P210N, P210R, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, and T210R.
(16) T303.
(17) 336.
(18) 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP, FT337HP, M337B, P337H, T337B, T337C, T337D, T337E, T337F, T337G, T337H, and T337H–SP.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 51; Standard Practices Structures.

Unsafe Condition

(e) This AD was prompted by reports of seats slipping on the rails where the primary latch pin for the pilot/copilot seat is not properly engaged in the seat rail/track and reports of the seat roller housing departing the seat rail. We are issuing this AD to prevent seat slippage or the seat roller housing from departing the seat rail, which may consequently cause the pilot/copilot to be unable to reach all the controls. This failure could lead to the pilot/copilot losing control of the airplane.

Compliance

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

Actions

(g) For all airplanes, to address the unsafe condition described in paragraph (e) of this AD, you must do the following actions on the seat rails; seat rollers, washers, and axle bolts or bushings; seat roller housings and the tangs; and lock pin springs, unless already done, initially within the next 100 hours time-in-service (TIS) after the last inspection done following AD 87–20–03 R2 or within the next 12 calendar months after the effective date of this AD, whichever occurs first. Repetitively thereafter do the actions at intervals not to exceed every 100 hours TIS or every 12 months, whichever occurs first:

(1) Visually inspect the pilot and copilot seat rails for dirt and debris that may prevent engagement of the seat locking pins. Before further flight, after any inspection where dirt or debris is found, remove the dirt or debris found.

(2) Remove the seat from the seat rail.

(i) Remove the seat stops.

(ii) Disengage seat belt/shoulder harness from the seat, if necessary.

(iii) Raise vertical adjusting seats to maximum height.

(iv) Hold seat latches disengaged and slide the seat forward and aft to disengage rollers.

(v) Lift the seat out of the airplane.

(3) Inspect the diameter of each seat locking pin engagement hole in the pilot and copilot seat rails for excessive wear. Due to wear on the rail surface at the hole opening, we allow this measurement 0.020 of an inch below the surface of the rail. You must take this measurement somewhere between the surface of the rail or no more than 0.020 of an inch below the surface of the rail.

(i) If the diameter of any of the holes is 0.42 of an inch or more (see figure 1), before further flight, replace the rail.

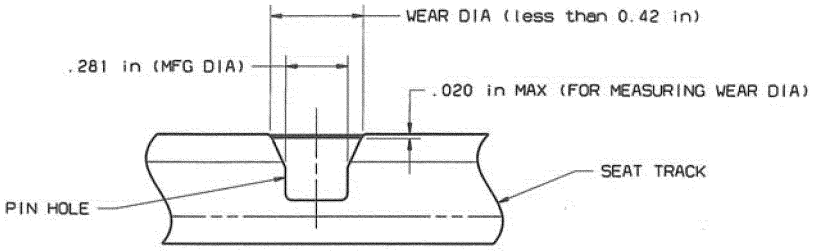

Figure 1. Diameter of seat pin locking engagement hole

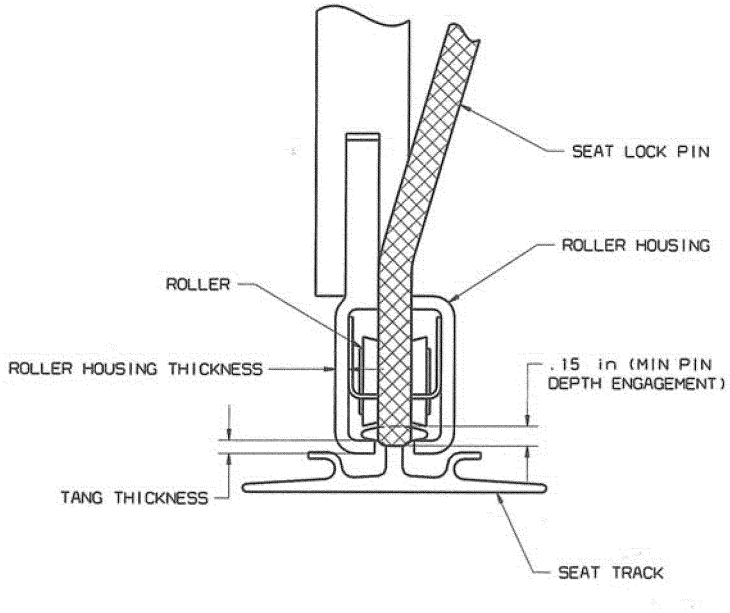

Figure 2. Seat locking pin depth engagement

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(ii) Rail replacement does not terminate the repetitive actions required in paragraph (g) of this AD.

(4) Visually inspect the seat rollers for flat spots and inspect the rollers and washers for binding. Assure all rollers and washers, which are meant to rotate, turn freely on their axles (or bushings if installed).

(i) Before further flight, replace any rollers with flat spots and any worn washers.

(ii) Before further flight, remove and clean the parts if there is any binding between the bores of the rollers, washers, or axles.

(iii) Do not lubricate the rollers, washers, or axles because the lubricant will attract dust and other particles that may cause binding.

(5) Inspect the thickness of the tang (see figure 2 and figure 3). Due to wear of the tang chafing against the seat rail, measure the tang thickness where the tang inner edges contact the seat rail.

(i) If the tang thickness measures less than 0.05 of an inch, before further flight replace the roller housing.

(ii) Replacement of the roller housing does not terminate the repetitive actions required in paragraph (g) of this AD.

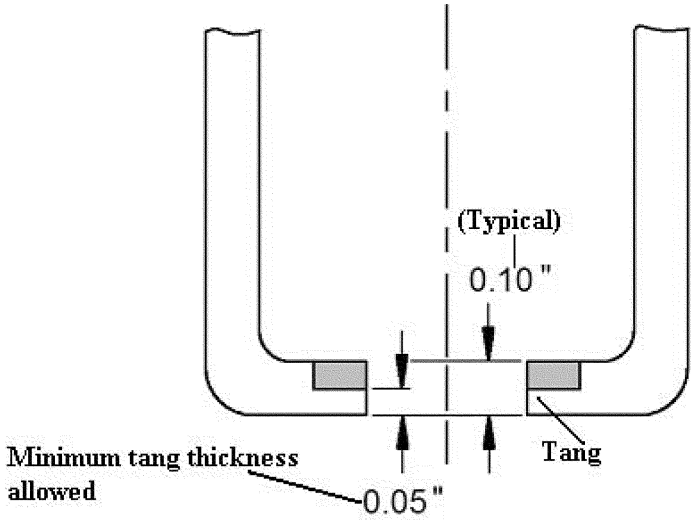

Figure 3. Closeup of seat roller housing and tang thickness

(6) Due to wear or deformation of the tangs, inspect the tang length from the inner edge of the tang to the outer edge (the bend area) of the roller housing (see figure 4).

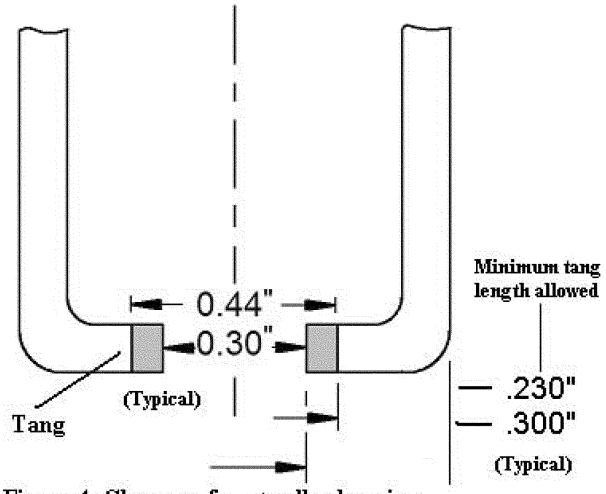

Figure 4. Closeup of seat roller housing and tang gap width

(i) The minimum measurement allowed for the remaining tang length is 0.230 inches remaining on either of the tangs, from the inner edge of the tang to the outer edge (the bend area) of the roller housing. If the measurement is less than 0.230 inches on either of the tangs, before further flight, replace the roller housing.

(ii) Replacement of the roller housing does not terminate the repetitive actions required in paragraph (g) of this AD.

(7) Inspect the springs that keep the lock pins in position in the rail holes for positive engagement action. Before further flight, replace any spring that does not provide positive engagement.

(8) Visually inspect the seat rails for cracks.

(i) If there are seat rail cracks that exceed the crack criteria in figure 5, before further flight, replace the seat rail.

(ii) Replacement of the seat rail does not terminate the repetitive actions required in paragraph (g) of this AD.

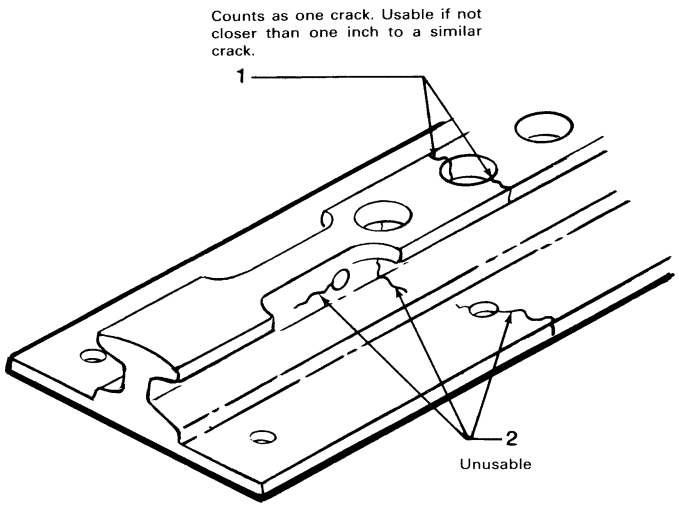

Figure 5. Seat rail

(9) Reinstall the seat on the seat rail.

(i) Lift the seat into the airplane and place on the seat rail.

(ii) Hold seat latches disengaged and slide the seat aft and then forward to re-engage rollers.

(iii) Lower vertical adjusting seats to a comfortable height.

(iv) Reattach seat belt/shoulder harness to the seat, if previously attached to the seat.

(v) Reinstall the seat stops.

(10) Lift up the forward edge of each seat to eliminate vertical play of the seat locking pin in the engagement hole, and from this position, inspect the depth of engagement of each seat locking pin (see figure 2). If the rail is worn, this depth is measured from the worn surface, not the manufactured surface.

(i) If engagement of any of the seat locking pins measures less than 0.15 of an inch, before further flight, replace or repair any seat components necessary to achieve a seat pin engagement of a minimum of 0.15 of an inch.

(ii) Repair or replacement of necessary seat components does not terminate the repetitive actions required in paragraph (g) of this AD.

Paperwork Reduction Act Burden Statement

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

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 87–20–03 R2 are approved for this AD.

Related Information

(j) For more information about this AD, contact Gary Park, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4123; fax: (316) 946–4107; e-mail: *gary.park@faa.gov*.

Issued in Kansas City, Missouri, on April 27, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10988 Filed 5–12–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0468; Directorate Identifier 2011–CE–013–AD; Amendment 39–16697; AD 2011–10–16]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that will supersede an existing AD. This emergency AD was sent previously to all known U.S. owners and operators of PIAGGIO AERO INDUSTRIES S.p.A (Piaggio) Model PIAGGIO P–180 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Prompted by reports of water accumulated in the lower part of the fuselage on a number of Piaggio Model P.180 aeroplanes, which resulted in jamming of the flight controls, on 17 December 2010, the Federal Aviation Administration (FAA), the authority of the State of Registry of the affected aeroplanes, issued Emergency AD 2011–01–51 to require an immediate functional test of the fuselage drain holes and a report of the results to the FAA. That AD was later superseded, on 20 December 2010, by FAA Emergency AD 2011–01–53.

This condition, if not detected and corrected, could, when the aeroplane reaches and holds an altitude where the temperature is below the freezing point, cause the flight controls to freeze and jam, possibly resulting in loss of control of the aeroplane.

Since these AD actions were taken, Piaggio Aero Industries, the type design approval holder and manufacturer of these aeroplanes, have published Alert Service Bulletin (SB) 80–0324, which describes the same inspection, testing and correction instructions as contained in the FAA Emergency AD. EASA AD 2010–0269–E required the inspection and functional testing of the fuselage drain holes, corrective actions depending on findings, and reporting of the findings to Piaggio Aero Industries.

Following issuance of EASA AD, another event of in-flight blockage of flight controls was reported by an operator. The aeroplane was already compliant with EASA AD 2010–0269–E, and during accomplishment of the AD required inspection no discrepancies had been noted, nor water or ice accumulation were reported. As a consequence, additional drain holes were not drilled.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD is effective May 31, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–09–51, issued on April 26, 2011, which contained the requirements of this amendment.

On May 31, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by June 27, 2011.

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

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

For service information identified in this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office; Via Luigi Cibrario, 4—16154 Genova—Italy; *telephone:* +39 010 6481353; *fax:* +39 010 6481881; *E-mail: airworthiness@piaggioaero.it.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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 street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA received information on two incidents where Piaggio Model P–180 airplanes had water accumulation in the belly of the fuselage that froze and caused the flight controls to jam. On December 20, 2010, we issued Emergency AD 2011–01–53, amendment 39–16582 (76 FR 4056, January 24, 2011) to require an immediate functional test of the fuselage drain holes and a report of the results to the FAA. It also allows, with noted exceptions, for the return/position of the airplane to a home base, hangar, maintenance facility, etc.

Since we issued AD 2011–01–53, another Piaggio P–180 airplane experienced jamming of the flight control cables also due to water accumulating and freezing in the lower fuselage area. This event happened after this airplane had complied with AD 2011–01–53, noting no problems with the fuselage drain system.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2011–0074–E, dated April 22, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

* * * another event of in-flight blockage of flight controls was reported by an operator. The aeroplane was already compliant with EASA AD 2010–0269–E, and during accomplishment of the AD required inspection no discrepancies had been noted, nor water or ice accumulation were reported. As a consequence, additional drain holes were not drilled.

For the reasons described above, this AD, which supersedes EASA AD 2010–0269–E, requires, in order to improve efficiency of the drainage system, to cut the rubber flap of the 2 aft flapper valves, to inspect the flapper valves for proper functioning and the subsequent accomplishment of a functional test of the fuselage drain holes.

Furthermore, for those MSN not compliant with Piaggio Aero Industries Service Bulletin (SB) 80–0291 and where no additional drain holes had been drilled in accordance with the accomplishment instructions of Piaggio Aero Industries Alert Service Bulletin ASB–80–0324, step 5, this AD requires drilling additional drain holes.

It is finally required to report the inspection results to Piaggio Aero industries.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

PIAGGIO AERO INDUSTRIES S.p.A has issued Service Bulletin (Mandatory) N.: 80–0330, dated April 21, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this

AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

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 water may accumulate in the belly of the fuselage and freeze, which may cause the flight controls to jam. This condition may lead to loss of control. 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–2011–0468; Directorate Identifier 2011–CE–013–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 102 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $78,030, or $765 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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); and

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

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

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 Amendment 39–16582 (76 FR 4056, January 24, 2011), and adding the following new AD:

2011–09–51 Piaggio Aero Industries S.P.A.: Amendment 39–16697; Docket No. FAA–2011–0468; Directorate Identifier 2011–CE–013–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 31, 2011.

Affected ADs

(b) This AD supersedes AD 2011–01–53, Amendment 39–16582.

Applicability

(c) This AD applies to Piaggio Aero Industries S.p.A. Models P–180 airplanes, all serial numbers, certified in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

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

* * * another event of in-flight blockage of flight controls was reported by an operator. The aeroplane was already compliant with EASA AD 2010–0269–E, and during accomplishment of the AD required inspection no discrepancies had been noted, nor water or ice accumulation were reported. As a consequence, additional drain holes were not drilled.

For the reasons described above, this AD, which supersedes EASA AD 2010–0269–E, requires, in order to improve efficiency of the drainage system, to cut the rubber flap of the 2 aft flapper valves, to inspect the flapper valves for proper functioning and the subsequent accomplishment of a functional test of the fuselage drain holes.

Furthermore, for those MSN not compliant with Piaggio Aero Industries Service Bulletin (SB) 80–0291 and where no additional drain holes had been drilled in accordance with the accomplishment instructions of Piaggio Aero Industries Alert Service Bulletin ASB–80–0324, step 5, this AD requires drilling additional drain holes.

It is finally required to report the inspection results to Piaggio Aero industries.

Actions and Compliance

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

(1) Within the next 10 hours time-in-service (TIS) after May 31, 2011 (the effective date of this AD) or within the next 10 days after May 31, 2011 (the effective date of this AD), whichever occurs first, cut off the rubber flap of the two flapper valves near frame 36, inspect the flapper valves, and do the functional test of the valves and fuselage drainage holes following Part A of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0330, dated April 21, 2011.

(2) If in the inspection and functional test required in paragraph (f)(1) of this AD the valves and drain holes are found to not drain properly, before further flight, take corrective action following Part A of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0330, dated April 21, 2011.

(3) Within the next 165 hours TIS after May 31, 2011 (the effective date of this AD) or within the next 90 days after May 31, 2011 (the effective date of this AD), whichever occurs first, add drain holes on keel beam webs connecting the lateral bays to the center bays following Part B of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0330, dated April 21, 2011; or PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0291, dated November 29, 2010.

(4) Within 10 days after complying with the actions required in paragraphs (f)(1), (f)(2), and (f)(3) of this AD or within 10 days after May 31, 2011 (the effective date of this AD), whichever occurs later, report the results (including no findings) using the Confirmation Slip attached to PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0330, dated April 21, 2011. Send the report to Piaggio at one of the addresses (facsimile, email) referenced in the Related Information section, paragraph (i)(2) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to EASA AD No.: 2011–0074–E, dated April 22, 2011; PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0330, dated April 21, 2011; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0291, dated November 29, 2010 for related information.

Material Incorporated by Reference

(i) You must use PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0330, dated April 21, 2011; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0291, dated November 29, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office; Via Luigi Cibrario, 4—16154 Genova—Italy; *telephone:* +39 010 6481353; *fax:* +39 010 6481881; *E-mail: airworthiness@piaggioaero.it.*

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

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

Issued in Kansas City, Missouri, on May 4, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11330 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0030; Directorate Identifier 2009–NM–183–AD; Amendment 39–16698; AD 2011–10–17]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: We are superseding three existing airworthiness directives (ADs) that apply to the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently listed in Airbus ALI Documents, which are referenced in the A300, A310, and A300–600 Airworthiness Limitations Section (ALS) Part 2. Airbus has recently revised the ALI Documents, which have been approved by the European Aviation Safety Agency (EASA).

* * * * *

The actions contained in these revised documents, which introduce more restrictive maintenance requirements and/or airworthiness limitations, have been identified as mandatory actions for continued airworthiness. * * *

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 17, 2011.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in this AD as of June 17, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 14, 2008 (72 FR 69612, December 10, 2007).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 31, 2007 (72 FR 54536, September 26, 2007).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of April 3, 2007 (72 FR 8604, February 27, 2007).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 9, 1996 (61 FR 35122, July 5, 1996).

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 25, 2011 (76 FR 4260), and proposed to supersede AD 2007–04–11, Amendment 39–14943 (72 FR 8604, February 27, 2007); AD 2007–20–03, Amendment 39–15213 (72 FR 54536, September 26, 2007); and AD 2007–25–02, Amendment 39–15283 (72 FR 69612, December 10, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently listed in Airbus ALI Documents, which are referenced in the A300, A310, and A300–600 Airworthiness Limitations Section (ALS) Part 2. Airbus has recently revised the ALI Documents, which have been approved by the European Aviation Safety Agency (EASA).
>
> —Airbus A300 ALI Document issue 04.
> —Airbus A310 ALI Document issue 07 and
> —Airbus A300–600 ALI Document issue 12
>
> The actions contained in these revised documents, which introduce more restrictive maintenance requirements and/or airworthiness limitations, have been identified as mandatory actions for continued airworthiness. EASA issued ADs 2006–0071, 2006–0260, and 2006–0374 [which correspond to FAA ADs 2007–04–11, 2007–25–02, and 2007–20–03] to require compliance with the maintenance requirements and associated airworthiness limitations defined in previous issues of these Airbus ALI documents.
>
> For the reason described above, [the] EASA AD supersedes existing ADs 2006–0071, 2006–0260, and 2006–0374 and requires an update to the approved aircraft maintenance programme and compliance with the maintenance requirements and associated airworthiness limitations defined in the Airbus ALI Documents listed above.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. The required actions include revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new and revised structural inspections and inspection intervals. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 206 products of U.S. registry.

The actions that are required by AD 2007–04–11, AD 2007–20–03, and AD 2007–25–02, and retained in this proposed AD, take about 1 work hour per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of those actions on U.S. operators to be $85 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $17,510, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14943 (72 FR 8604, February 27, 2007); Amendment 39–15213 (72 FR 54536, September 26, 2007); and Amendment 39–15283 (72 FR 69612, December 10, 2007); and adding the following new AD:

2011–10–17 Airbus: Amendment 39–16698. Docket No. FAA–2011–0030; Directorate Identifier 2009–NM–183–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 17, 2011.

Affected ADs

(b) This AD supersedes AD 2007–04–11, Amendment 39–14943; AD 2007–20–03, Amendment 39–15213; and AD 2007–25–02, Amendment 39–15283.

Applicability

(c) This AD applies to all Airbus model airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Model A300 B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, and B4–203 airplanes.

(2) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(3) Models A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (t)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Subject

(d) Air Transport Association (ATA) of America Codes 52: Doors; 53: Fuselage; 54: Nacelles/pylons; 55: Stabilizers; 57: Wings; and 71: Powerplant (for Model A300–600 only).

Reason

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

The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently listed in Airbus ALI Documents, which are referenced in the A300, A310, and A300–600 Airworthiness Limitations Section (ALS) Part 2. Airbus has recently revised the ALI Documents, which have been approved by the European Aviation Safety Agency (EASA).

* * * * *

The actions contained in these revised documents, which introduce more restrictive maintenance requirements and/or airworthiness limitations, have been identified as mandatory actions for continued airworthiness. * * *

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2007–04–11

(g) Within one year after August 9, 1996 (the effective date of AD 96–13–11), replace the revision of the maintenance program with the inspections, inspection intervals, repairs, and replacements defined in Airbus Industrie A300 Supplemental Structural Inspection Document, Revision 2, dated June 1994. Accomplish the actions specified in the service bulletins identified in Section 6, "SB Reference List," in Airbus Industrie A300 Supplemental Structural Inspection Document, Revision 2, dated June 1994, at the times specified in those service bulletins. The actions are to be accomplished in accordance with those service bulletins. Accomplishing the initial ALI tasks required by paragraph (s) of this AD terminates the actions required by this paragraph.

(1) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, "SB Reference List," in Airbus Industrie A300 Supplemental Structural Inspection Document, Revision 2, dated June 1994: Accomplish the actions specified in those service bulletins within the grace period specified in those service bulletins. The grace period is to be measured from August 9, 1996.

(2) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, "SB Reference List," in Airbus Industrie A300 Supplemental Structural Inspection Document, Revision 2, dated June 1994, and a grace period is not specified in that service bulletin: Accomplish the actions specified in that service bulletin within 1,500 flight cycles after August 9, 1996.

Revision of the Maintenance Inspection Program

(h) For airplanes identified in paragraph (c)(1) of this AD: Within 12 months after April 3, 2007 (the effective date of AD 2007–04–11), replace the revision of the maintenance program required by paragraph (g) of this AD with the supplemental structural inspections, inspection intervals, and repairs defined in Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 Temporary Revision (TR) 3.1, dated April 2006. Accomplish the actions specified in Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 TR 3.1, dated April 2006, at the times specified in that ALI, except as provided by paragraph (i) of this AD. The actions must be accomplished in accordance with Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 TR 3.1, dated April 2006. Accomplishing the initial ALI tasks required by paragraph (s) of this AD terminates the actions required by this paragraph.

(i) For airplanes identified in paragraph (c)(1) of this AD that have exceeded the threshold or intervals specified in the Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, for the application tolerance on the first interval for new and revised requirements and have exceeded 50 percent of the intervals specified in sections D and E of Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005: Do the actions within 6 months after April 3, 2007.

Corrective Actions

(j) Damaged, cracked, or corroded structure detected during any inspection done in accordance with the Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, must be repaired, before further flight, in accordance with Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 TR 3.1,

dated April 2006, except as provided by paragraph (k) of this AD; or other data meeting the certification basis of the airplane which is approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or by the European Aviation Safety Agency (EASA) (or its delegated agent).

(k) Where the Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, specifies contacting Airbus for appropriate action: Before further flight, repair the damaged, cracked, or corroded structure using a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

No Fleet Sampling

(l) Although Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, specifies to do a "Sampling Concept" in section B, this AD prohibits the use of such a sampling program and requires all affected airplanes of the fleet to be inspected.

No Reporting

(m) Although Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Restatement of Requirements of AD 2007–20–03

Actions and Compliance

(n) For airplanes identified in paragraph (c)(3) of this AD: Within 3 months after October 31, 2007 (the effective date AD 2007–20–03), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006. The tolerance (grace period) for compliance (specified in paragraph 2 of Section B—Program Rules) with Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006, is within 2,000 flight cycles after October 31, 2007, provided that none of the following is exceeded. Accomplishing the initial ALI tasks required by paragraph (s) of this AD terminates the actions required by this paragraph.

(1) Thresholds or intervals in the operator's current approved maintenance schedule that are taken from a previous ALI issue, if existing, and are higher than or equal to those given in Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

(2) 8 months after October 31, 2007.

(3) 50 percent of the intervals given in Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

(4) Any application tolerance given in the task description of Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

Restatement of Requirements of AD 2007–25–02

Revision of the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA)

(o) For airplanes identified in paragraph (c)(2) of this AD: Within 3 months after January 14, 2008 (the effective date of AD 2007–25–02), do the actions specified in paragraphs (o)(1) and (o)(2) of this AD. Accomplishing the initial ALI tasks required by paragraph (s) of this AD terminates the actions required by this paragraph.

(1) Revise the ALS of the ICA to incorporate the structural inspections and inspection intervals defined in Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006 (approved by the EASA on May 31, 2006). Accomplish the actions specified in Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, at the times specified in Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, except as provided by paragraph (p) of this AD. Thereafter, except as provided by paragraphs (o)(2) and (t)(1) of this AD, no alternative structural inspection intervals may be approved. The actions specified in Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, must be accomplished in accordance with Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006.

(2) Revise the ALS of the ICA to incorporate the new and revised structural inspections and inspection intervals defined in Airbus Temporary Revision (TR) 6.1, dated November 2006 (approved by the EASA on December 12, 2006), to Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006. Thereafter, except as provided by paragraph (t)(1) of this AD, no alternative structural inspection intervals may be approved.

Exception to Issue 6 of the ALI

(p) The tolerance (grace period) for compliance with Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, is within 1,500 flight cycles after January 14, 2008, provided that none of the following is exceeded.

(1) Thresholds or intervals in the operator's current approved maintenance schedule that are taken from a previous ALI issue, if existing, and are higher than or equal to those given in Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006.

(2) 18 months after January 14, 2008.

(3) 50 percent of the intervals given in Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006.

(4) Any application tolerance specified in Section D of Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006.

Corrective Actions

(q) Damaged, cracked, or corroded structure detected during any inspection done in accordance with Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, must be repaired, before further flight, in accordance with Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006; or in accordance with other data meeting the certification basis of the airplane that has been approved by either the Manager, International Branch, ANM–116, or the EASA (or its delegated agent). Where Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, specifies to contact Airbus for appropriate action: Before further flight, repair the damaged, cracked, or corroded structure using a method approved by either the Manager, International Branch, ANM–116, or the EASA (or its delegated agent).

Reporting Requirement

(r) If any damage that exceeds the allowable limits specified in Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, is detected during any inspection required by this AD: At the applicable time specified in paragraph (r)(1) or (r)(2) of this AD, submit a report of the finding to Airbus, Customer Service Directorate, Attn: Department Manager Maintenance Engineering, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; e-mail: *sched.maint@airbus.com.* The report must include the ALI task reference, airplane serial number, the number of flight cycles and flight hours on the airplane, identification of the affected structure, location and description of the finding including its size and orientation, and the circumstance of detection and inspection method used.

(1) If the inspection was done after January 14, 2008: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to January 14, 2008: Submit the report within 30 days after January 14, 2008.

New Requirements of This AD

Revision of the ALS of the Instructions for ICA

(s) Within 3 months after the effective date of this AD: Revise the maintenance program to incorporate the structural inspections and inspection intervals defined in the applicable ALI document listed in Table 1 of this AD. Thereafter, except as provided by paragraph (t)(1) of this AD, no alternative structural inspections and inspection intervals may be approved. The actions must be accomplished in accordance with the applicable issue of the ALI. The initial ALI tasks must be done at the times specified in the applicable ALI document listed in Table 1 of this AD. Accomplishing the applicable initial ALI tasks constitutes terminating action for the requirements of paragraphs (g) through (r) of this AD for that airplane only.

TABLE 1—AIRWORTHINESS LIMITATIONS ITEMS DOCUMENT

Model	Document	Issue	Date
A300	Airbus A300 Airworthiness Limitation Items Document AI/SE–M2/95A.1308/07.	4	June 2008.
A310	Airbus A310 Airworthiness Limitation Items Document AI/SE–M2/95A.1309/07.	7	June 2008.
A300–600	Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.1310/07.	12	June 2008.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Where the MCAI includes a compliance time of "from the effective date of this AD," we have determined that a compliance time of "within 3 months after the effective date of this AD" is appropriate. The manufacturer and EASA agree with this difference in compliance time.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* 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. AMOCs approved previously in accordance with AD 2007–04–11, Amendment 39–14943; AD 2007–20–03, Amendment 39–15213; and AD 2007–25–02, Amendment 39–15283; as applicable; are approved as AMOCs for the corresponding provisions of 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.

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

Related Information

(u) Refer to MCAI EASA Airworthiness Directive 2009–0155, dated July 17, 2009; Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006; Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.1310/07, Issue 12, dated June 2008; Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 Temporary Revision 3.1, dated April 2006; Airbus A300 Airworthiness Limitation Items Document AI/SE–M2/95A.1308/07, Issue 4, dated June 2008; Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006; Airbus Temporary Revision 6.1, dated November 2006; Airbus A310 Airworthiness Limitation Items Document, AI/SE–M2/95A.1309/07, Issue 7, dated June 2008; and Airbus Industrie A300 Structural Inspection Document, Revision 2, dated June 1994; for related information.

Material Incorporated by Reference

(v) You must use the service information contained in Table 2 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Issue/revision	Date
Airbus A300 Airworthiness Limitation Items Document AI/SE–M2/95A.1308/07	4	June 2008.
Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, as revised by Airbus A300 TR 3.1, dated April 2006.	3	September 2005.
Airbus A300 Airworthiness Limitation Items, Document SEM2/95A.1090/05, Temporary Revision 3.1, including attachment, dated April 2006, and including attachments dated September 2005.	Original	April 2006.
Airbus Temporary Revision 6.1, including pages 1 and 2 of Section D and page 1 of Section E, dated November 2006, to Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006.	Original	November 2006.
Airbus A310 Airworthiness Limitation Items Document AI/SE-M2/95A.1309/07	7	June 2008.
Airbus A310 Airworthiness Limitations Items Document AI/SE-M2/95A.0263/06	6	April 2006.
Airbus A300–600 Airworthiness Limitation Items Document AI/SE-M2/95A.1310/07	12	June 2008.
Airbus A300–600 Airworthiness Limitation Items Document AI/SE-M2/95A.0502/06	11	April 2006.
Airbus Industrie A300 Structural Inspection Document	2	June 1994.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 3 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Issue	Date
Airbus A300 Airworthiness Limitation Items Document AI/SE–M2/95A.1308/07	4	June 2008.
Airbus A310 Airworthiness Limitation Items Document AI/SE–M2/95A.1309/07	7	June 2008.
Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.1310/07	12	June 2008.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006; and Airbus Temporary Revision 6.1, including pages 1 and 2 of Section D and page 1 of Section E, dated November 2006, to Airbus A310 Airworthiness Limitations Items Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006; on January 14, 2008 (72 FR 69612, December 10, 2007).

(3) The Director of the Federal Register previously approved the incorporation by reference of Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006, on October 31, 2007 (72 FR 54536, September 26, 2007).

(4) The Director of the Federal Register previously approved the incorporation by reference of Airbus A300 Airworthiness Limitations Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Temporary Revision 3.1, including attachment, dated April 2006, and including attachments, dated September 2005, on April 3, 2007 (72 FR 8604, February 27, 2007).

(5) The Director of the Federal Register previously approved the incorporation by reference of Airbus Industrie A300 Supplemental Structural Inspection Document, Revision 2, dated June 1994, on August 9, 1996 (61 FR 35122, July 5, 1996).

(6) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(7) 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.

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

Issued in Renton, Washington, on May 2, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11333 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0042; Directorate Identifier 2010–NM–267–AD; Amendment 39–16695; AD 2011–10–14]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Model MYSTERE–FALCON 50 Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

On two occurrences on Mystère-Falcon 50 aeroplanes in service, it was detected that two pipes of the emergency brake system #2 located near the nose landing gear bearing were swapped.

The swapping of these two pipes implies that when the Left Hand (LH) brake pedal is depressed, the Right Hand (RH) brake unit is activated, and conversely, when the RH brake pedal is depressed, the LH brake unit is actuated. This constitutes an unsafe condition, which may go unnoticed as the condition is latent until the emergency brake system #2 is used. This condition, if not corrected, could ultimately lead to a runway excursion of the aeroplane.

* * * * *

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

DATES: This AD becomes effective June 17, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 9, 2010 (75 FR 71530, November 24, 2010).

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 16, 2011 (76 FR 8919), and proposed to supersede AD 2010–24–08, Amendment 39–16527 (75 FR 71530, November 24, 2010). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In AD 2010–24–08, we pointed out that the corresponding EASA AD, AD 2010–0208–E, dated October 12, 2010, requires painting the pipes end of the emergency brake system number 2 and related unions within 7 months after the effective date of that AD. We explained that AD 2010–24–08 did not require that action, and that we might consider additional rulemaking to require this action in the future. We have determined that further rulemaking is indeed necessary to require that action, and this AD follows from that determination.

You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 248 products of U.S. registry.

The actions that are required by AD 2010–24–08 and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $21,080, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16527 (75 FR 71530, November 24, 2010) and adding the following new AD:

2011–10–14 Dassault Aviation: Amendment 39–16695. Docket No. FAA–2011–0042; Directorate Identifier 2010–NM–267–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 17, 2011.

Affected ADs

(b) This AD supersedes AD 2010–24–08, Amendment 39–16527.

Applicability

(c) This AD applies to DASSAULT AVIATION Model MYSTERE–FALCON 50 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

On two occurrences on Mystère-Falcon 50 aeroplanes in service, it was detected that two pipes of the emergency brake system #2 located near the nose landing gear bearing were swapped.

The swapping of these two pipes implies that when the Left Hand (LH) brake pedal is depressed, the Right Hand (RH) brake unit is activated, and conversely, when the RH brake pedal is depressed, the LH brake unit is actuated. This constitutes an unsafe condition, which may go unnoticed as the condition is latent until the emergency brake system #2 is used. This condition, if not corrected, could ultimately lead to a runway excursion of the aeroplane.

* * * * *

Compliance

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

Restatement of Requirements of AD 2010–24–08

Actions

(g) Within 7 days after December 9, 2010 (the effective date of AD 2010–24–08), do a general visual inspection for correct installation (as defined in Dassault Service Bulletin F50–515, dated October 12, 2010) of the emergency brake system number 2, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–515, dated October 12, 2010, except that work required by this AD can only be done by persons prescribed in 14 CFR 43.3 and 43.7.

(h) If the emergency brake system number 2 is found installed incorrectly during the inspection required by paragraph (g) of this AD: Before further flight, install the emergency brake system number 2 correctly, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–515, dated October 12, 2010.

New Requirements of This AD

(i) Within 7 months after the effective date of this AD, paint the pipe ends of the emergency brake system #2 and related unions, in accordance with paragraph 2.C. of the Accomplishment Instructions of Dassault Service Bulletin F50–515, dated October 12, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) European Aviation Safety Agency (EASA) AD 2010–0208–E, dated October 12,

2010, has a compliance time of "before the next flight after the effective date of this AD." This AD requires that the actions be done within 7 days after the effective date of AD 2010–24–08.

(2) EASA AD 2010–0208–E, dated October 12, 2010, allows the flightcrew to inspect the emergency brake system number 2 specified in accordance with Dassault Service Bulletin F50–515, dated October 12, 2010. However, this AD requires the inspection to be performed by certificated maintenance personnel.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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.

Related Information

(k) Refer to MCAI EASA AD 2010–0208–E, dated October 12, 2010; and Dassault Service Bulletin F50–515, dated October 12, 2010; for related information.

Material Incorporated by Reference

(l) You must use Dassault Service Bulletin F50–515, dated October 12, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Dassault Service Bulletin F50–515, dated October 12, 2010, on December 9, 2010 (75 FR 71530, November 24, 2010).

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

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

Issued in Renton, Washington, on April 28, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11329 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1217

RIN 3041–AC79

Safety Standard for Toddler Beds

Correction

In rule document 2011–9421 beginning on page 22019 in the issue of Wednesday, April 20, 2011, make the following correction:

§ 1217.2 [Corrected]

On page 22029, in § 1217.2(c)(6), at the bottom of the page, insert §§ 1217.2(c)(6)(iii), 1217.2(c)(6)(iv), and 1217.2(c)(7), which should read:

(iii) 8.4.4 Toddler beds that convert from a full-size crib, also known as convertible cribs, must meet the warning requirements specified in section 8 of ASTM F 1169–10, instead of the requirements of 8.4.3. See 16 CFR Part 1219 for complete requirements for full-size cribs.

(iv) 8.4.5 Any toddler bed that can convert from a full-size crib, and has the warning specified in section 8.1.3 of ASTM F 1169–10, must include additional text at the end of that warning that specifies the minimum mattress thickness of 4 inches (100 mm). See 16 CFR Part 1219 for complete requirements for full-size cribs.

(7) In addition to figure 10 of ASTM F 1821–09, use the following:

[FR Doc. C1–2011–9421 Filed 5–12–11; 8:45 am]

BILLING CODE 1505–01–D

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2010–0104

16 CFR Part 1512

RIN 3041–AC95

Requirements for Bicycles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is amending its bicycle regulations. The amendments make minor changes to the existing regulations to reflect new technologies, designs, and features in bicycles by clarifying that certain provisions or testing requirements do not apply to specific bicycles or bicycle parts. The amendments also clarify several ambiguous and confusing provisions. The final rule also corrects typographical errors and removes an outdated reference.

DATES: The rule is effective June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Vincent J. Amodeo, Mechanical Engineer, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail *vamodeo@cpsc.gov;* telephone 301–504–7570.

SUPPLEMENTARY INFORMATION:

I. Background

CPSC regulations, at 16 CFR part 1512, establish requirements for bicycles pursuant to the Federal Hazardous Substances Act. The regulations were first promulgated in 1978 (43 FR 60034 (Dec. 22, 1978)), with minor amendments in 1980 (45 FR 82627 (Dec. 16, 1980)), 1981 (46 FR 3204 (Jan. 14, 1981)), 1995 (60 FR 62990 (Dec. 8, 1995)), and 2003 (68 FR 7073 (Feb. 12, 2003)); 68 FR 52691 (Sept. 5, 2003)).

In recent years, there have been technological changes in bicycle design and in the materials used to manufacture bicycles that have caused some bicycle manufacturers to question the applicability of a particular CPSC regulation or to seek changes to the regulations. Additionally, the enactment of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, 122 Stat. 3016, has resulted in new testing and certification requirements for children's products. The Commission recognizes that there have been many changes in bicycle

technology, material, and design since the bicycle regulations were promulgated. The Commission intends to undertake a comprehensive review of the bicycle regulations at a future point to determine how these regulations might be further amended to address the changes that have taken place.

In the **Federal Register** of November 1, 2010 (75 FR 67043), we issued a proposed rule that would amend 16 CFR part 1512. The proposed rule would make minor changes to the existing regulations to reflect new technologies, designs and features in bicycles by clarifying that certain provisions or testing requirements do not apply to specific bicycles or bicycle parts. The proposal also would clarify several ambiguous and confusing provisions, correct typographical errors, and delete an outdated reference.

The proposed rule also was intended to facilitate the testing and certification requirements of section 14 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063, as amended by section 102 of the CPSIA. Section 14 of the CPSA requires manufacturers and private labelers of a product subject to a CPSC rule, ban, standard, or regulation to certify compliance of the product with such rule, ban, standard, or regulation. Section 14(a)(1) of the CPSA requires that certifications for nonchildren's products be based on a test of each product or upon a reasonable testing program. Section 14(a)(2) of the CPSA requires that certifications for children's products be based on tests conducted by a CPSC-accepted third party conformity assessment body (also commonly referred to as a third party laboratory or simply as a laboratory). Under section 14(a)(3) of the CPSA, the requirement to third-party test children's products applies to products manufactured more than 90 days after the CPSC has established and published notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with a particular rule. In the **Federal Register** of September 2, 2009 (74 FR 45428), the CPSC published a notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR part 1512.

However, in the **Federal Register** of February 9, 2009 (74 FR 6396), the Commission published a notice announcing that it had stayed, for one year, the testing and certification requirements of section 14 of the CPSA as applied to 16 CFR part 1512, and most other CPSC regulations. The stay was intended to give the CPSC time to address many issues raised by the CPSIA's testing and certification requirements (*Id.* at 6397). Later, in the **Federal Register** of December 28, 2009 (74 FR 68588), the Commission published a notice that revised the terms of the stay. The Commission maintained the stay on the testing and certification requirements for the bicycle regulations until May 17, 2010, because there was insufficient laboratory capacity for third party testing of bicycles at that time (*Id.* at 68590). The Commission invited bicycle manufacturers and laboratories to petition the Commission for additional relief if the extension of the stay proved insufficient.

On April 1, 2010, the Bicycle Products Suppliers Association (BPSA), which describes itself as an association of suppliers of bicycles, parts, accessories, and services who serve specialty bicycle retailers, petitioned the Commission for an additional extension of the stay. (The petition can be found at *http://www.regulations.gov* by searching for the docket number for this rulemaking.) The BPSA contended that there still was insufficient laboratory capacity to handle testing of children's bicycles. It also asserted that 16 CFR part 1512 is out of date in many respects, stated its understanding that the CPSC may commence rulemaking to revise part 1512 in the near future, and urged the Commission to begin such rulemaking. The BPSA suggested that the Commission maintain the stay on testing and certification of bicycles until such a rulemaking concludes, or for an additional year.

On May 3, 2010, CPSC staff met with representatives of the BPSA to discuss the petition. (A summary of the meeting can be found at *http://www.cpsc.gov/library/foia/meetings/mtg10/bpsa102.pdf.*) On June 17, 2010, the Commission published a notice in the **Federal Register** extending the stay on testing and certification requirements for bicycles until August 14, 2010, with two exceptions (75 FR 34360). First, because laboratory capacity, at that time, was still insufficient to assess compliance with the reflector requirements at 16 CFR 1512.16, the Commission extended the stay as it related to bicycle reflectors, until November 14, 2010 (*Id.*). The Commission allowed the additional three-month period for the development of CPSC-accepted laboratory capacity for bicycle reflector testing. Second, the Commission excluded bicycles with nonquill-type stems from the requirement to certify compliance with the handlebar stem insertion mark requirement at 16 CFR 1512.6(a); bicycles with nonquill-type stems may not be able to comply with the insertion mark requirement.

(A stem is the part of a bicycle that connects the handlebars to the "steerer" or upper part of the bicycle fork [the part of the bicycle that holds the front wheel and can turn to steer the bicycle]. A quill-type stem is a stem that is inserted into the steerer. Most older bicycles use a quill-type stem, but newer bicycles may use other means to connect the stem to the fork. For example, a "threadless" stem clamps onto the outside of the steerer [rather than having the stem go inside the steerer], and so we will refer to such other types of stems as "nonquill-type stems.")

In its letter responding to the BPSA's petition, the Commission communicated its decision to extend the stay until August 14, 2010, with the two exceptions for reflector testing and stems. We stated that we are aware that 16 CFR part 1512 does not adequately address some new technologies, designs, or materials, and we asked that manufacturers who believe that they are unable to certify current designs to 16 CFR part 1512 provide the Commission with specific information regarding which provisions of the current regulations are problematic, which models or classes of bicycles are affected, and an explanation of the issue.

In response, on June 4, 2010, the BPSA sent a chart to the CPSC identifying areas in the bicycle regulations that the BPSA considered problematic for certification. This chart differed slightly from a chart that the BPSA had provided informally to CPSC staff earlier in 2010. We considered both charts in the process of developing the proposed rule. (Both charts can be found at *http://www.regulations.gov* by searching for the docket number for this rulemaking.)

Consequently, in the **Federal Register** of November 1, 2010 (75 FR 67043), we published a notice of proposed rulemaking recommending several changes to the bicycle regulations meant to address some of the issues raised by the BPSA, and ease the burden on bicycle manufacturers by exempting specific bicycles or bicycle parts from certain requirements, clarifying ambiguous and confusing provisions, correcting several typographical errors and deleting an outdated provision. The preamble to the proposed rule also acknowledged that bicycle technologies, designs, and features have changed dramatically since 16 CFR part 1512 was originally promulgated, but stated that we cannot conduct a comprehensive review of the bicycle

regulations in the timeframe that is necessary for implementing the testing and certification requirements of section 14 of the CPSA (75 FR at 67044). Accordingly, the proposed rule would make only limited amendments to 16 CFR part 1512 to facilitate testing and certification of bicycles in accordance with section 14 of the CPSA. The Commission is staying testing and certification requirements for bicycle reflectors until November 14, 2011 because there currently are no CPSC-recognized laboratories that can test for compliance with the reflector requirements at 16 CFR 1512.16.

II. Comments on the Proposed Rule, the CPSC's Responses, and Description of the Final Rule

A. Introduction

We received 13 comments to the proposed rule. We received comments from individuals, a bicycle manufacturer and retailer, a consumer advocacy organization, and the BPSA. In brief, several commenters supported the rule whereas other commenters either sought a more comprehensive review of the bicycle regulations or opposed the rule because we had not conducted a more comprehensive review of the bicycle regulations. Other commenters sought changes that were specific to certain bicycle parts, such as brakes and clipless pedals. Several commenters addressed topics that were outside the scope of the rulemaking, such as suggesting changes to information on the CPSC's Web site.

We describe and respond to the comments in section II of this document and also describe the final rule. To make it easier to identify the comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, or importance, or the order in which it was received.

B. Definitions (§ 1512.2)

1. Sidewalk Bicycles (§ 1512.2(b))

The existing regulation, at § 1512.2(b), defines a "sidewalk bicycle" as "a bicycle with a seat height of no more than 635 mm (25.0 in); the seat height is measured with the seat adjusted to its highest position." The proposed rule would amend the definition of sidewalk bicycle by adding a sentence stating that recumbent bicycles are not considered sidewalk bicycles. Although some recumbent bicycles may have seats below the 635 millimeter height, recumbent bicycles do not share other features, or the intended riders, of sidewalk bicycles. This will have the effect of clarifying which requirements are applicable to recumbent bicycles, which were not available when the standard was first promulgated.

We received no comments on this provision and have finalized it without change.

2. Track Bicycles (§ 1512.2(d))

The existing regulation, at § 1512.2(d), defines a "track bicycle" as "a bicycle designed and intended for sale as a competitive machine having tubular tires, single crank-to-wheel ratio, and no free-wheeling feature between the rear wheel and the crank." Track bicycles are not subject to the requirements of 16 CFR part 1512. The proposed rule would amend the definition of track bicycle to further clarify which bicycles are not subject to the regulations. The proposed rule recommended adding the word "velodrome" between "competitive" and "machine," to clarify that a track bicycle is one intended for competitive velodrome racing. (A "velodrome" is an arena that has a banked track for bicycle racing.)

The proposed rule also recommended deleting the term "tubular tires." Improvements in clincher tires in recent years permit their use on track bicycles; therefore, a definition restricted to bicycles with tubular tires is no longer accurate and would have the effect of subjecting track bicycles with clincher tires to the regulations. (In very general terms, clincher tires are the type of tires associated with most bicycles and feature an inner tube and an outer tire that makes contact with the rims of a bicycle wheel at each edge [called a "bead"]. Tubular tires, in contrast, do not have edges that contact the rim; instead, tubular tires are attached to the rims using glue or tape.)

(Comment 1)—One commenter suggested that we consider whether track bicycles need or should have a braking system.

(Response 1)—Track bicycles, which are used by professionals in competitive racing, do not have brakes. Thus, in the final rule, we have revised the definition to state that a track bicycle is "a bicycle designed and intended for sale as a competitive velodrome machine having no brake levers or calipers, single crank-to-wheel ratio, and no free-wheeling feature between the rear wheel and the crank."

3. Recumbent Bicycle (Proposed § 1512.2(g))

Proposed § 1512.2(g) would define a recumbent bicycle as "a bicycle in which the rider sits in a reclined position with the feet extended forward to the pedals."

We received no comments on this provision and have finalized it without change.

C. Mechanical Requirements (§ 1512.4)

Section 1512.4 establishes various mechanical requirements for bicycles. Section 1512.4(b) prohibits "unfinished sheared metal edges or other sharp parts on bicycles that are, or may be, exposed to hands or legs." The proposed rule would add the word, "assembled" before "bicycles," to clarify that the prohibition on sharp edges does not apply to a bicycle still needing assembly when it is delivered to the consumer or retail store. Unassembled bicycles may contain sharp edges that are not present when the product is fully assembled.

The proposed rule also would correct a typographical error in § 1512.4(b). The wording should be, "burrs or spurs," rather than, "burrs of spurs," so that the sentence reads, "so as to remove any feathering of edges, or any burrs or spurs caused during the shearing process."

Section 1512.4(i) requires that the ends of all control cables have protective caps or otherwise be treated to prevent unraveling. The proposed rule would add the word "accessible" between the words "all" and "control cables," to clarify that only accessible control cable ends are subject to the requirement regarding protective caps or prevention of unraveling. In other words, control cable ends housed within the bicycle frame or component would not need to be covered with protective caps or otherwise treated to prevent unraveling.

We received no comments on this provision and have finalized it without change.

D. Requirements for Steering System (§ 1512.6)

Section 1512.6(a) requires that the bicycle handlebar stem have a permanent ring or mark to indicate the minimum insertion depth of the handlebar stem into the fork. It also requires that the insertion mark not affect the structural integrity of the stem, not be less than 2 ½ times the stem diameter from the lowest point of the stem, and that the stem strength be maintained for at least a length of one shaft diameter below the mark.

The proposed rule would revise the opening words of paragraph (a) from

"[t]he handlebar stem shall" to "[q]uill-type handlebar stems shall," to clarify that this requirement only applies to bicycles having quill-type stems. Because nonquill-type stems do not get inserted into the stem, there is no need for them to have an insertion depth mark. This aspect of the proposal would codify the CPSC policy, announced in the June 17, 2010, stay notice, that nonquill-type stems would be excluded from the requirement to certify compliance with § 1512.6(a).

Section 1512.6(c) specifies that handlebars must allow comfortable and safe control of the bicycle and that handlebar ends be symmetrically located with respect to the longitudinal axis of the bicycle and "no more than 406 mm (16 in) above the seat surface when the seat is in its lowest position and the handlebar ends are in their highest position." The proposed rule would create an exception for recumbent bicycles because the handlebars of recumbent bicycles may exceed this regulatory maximum, depending upon their design configuration.

We received no comments on this provision and have finalized it without change.

E. Requirements for Wheel Hubs (§ 1512.12(b))

Section 1512.12(b) currently states that, with respect to quick-release devices, the quick-release clamp action "shall emboss the frame or fork when locked." The proposed rule would create an exception for carbon fiber material. The requirement for a quick-release clamp action to emboss a frame or fork when locked is appropriate when bicycle frames are made using steel or aluminum. Modern technology, however, makes it possible to create bicycle frames using carbon fiber material. Carbon fiber is stronger than aluminum and steel, but embossing (or indenting) a carbon fiber frame or fork can weaken the material. To avoid such an illogical result (*i.e.*, of intentionally weakening a carbon fiber frame or fork), the proposal would create an exception for carbon fiber material.

(Comment 2)—One commenter agreed with the proposal, but asserted that the more accurate way to describe this material (carbon fiber material) is to use the term "fiber reinforced plastics."

(Response 2)—We agree with the commenter and have revised the final rule accordingly.

F. Requirements for Seat (§ 1512.15)

Section 1512.15 establishes various requirements for bicycle seats. Section 1512.15(a) imposes a limitation on seat height, stating that "[n]o part of the seat, seat supports, or accessories attached to the seat shall be more than 125 mm (5.0 in) above the top of the seat surface at the point where the seat surface is intersected by the seat post axis."

Section 1512.15(b) requires seat posts to contain a "permanent mark or ring that clearly indicates the minimum insertion depth (maximum seat-height adjustment)" and that the mark not affect the structural integrity of the seat post. (A seat post is a post on which the bicycle seat or saddle rests; a traditional seat post is inserted into the bicycle frame and can be moved up or down to accommodate the rider's size.) Section 1512.15(b) also requires the mark to be "located no less than two seat-post diameters from the lowest point on the post shaft, and the post strength shall be maintained for at least a length of one shaft diameter below the mark."

The proposed rule would create an exception for recumbent bicycles from the seat height limitation in § 1512.15(a). Recumbent bicycles are designed for reclined riding, so the seats on recumbent bicycles tend to have substantial seat backs. This exception would enable recumbent bicycles to retain their high seat-back design without being in violation of § 1512.15(a).

The proposed rule also would create an exception for bicycles with integrated seat masts from the requirement that seat posts contain a permanent mark or ring to indicate the minimum insertion depth. Integrated seat masts are part of the bicycle frame itself; thus, they do not get inserted in a seat post, and so no insertion depth mark is possible.

(Comment 3)—One commenter said that bicycles with integrated seat masts should continue to have a marking that allows retailers and consumers to easily determine that the seat and seat post are safely installed.

(Response 3)—We agree that integrated seat masts with a marking would allow retailers and consumers to easily determine that a seat is safely assembled. A mark on the product will reassure the public that the seat is safe. Thus, we have revised the final rule to state that, "(t)he seat post shall contain a permanent mark or ring that clearly indicates the minimum insertion depth (maximum seat-height adjustment); the mark shall not affect the structural integrity of the seat post. This mark shall be located no less than two seat-post diameters from the lowest point on the post shaft, and the post strength shall be maintained for at least a length of one shaft diameter below the mark. This requirement does not apply to bicycles with integrated seat masts, however, a permanent mark or other means to clearly indicate that the seat or seat post is safely installed shall be provided."

(Comment 4)—One commenter requested that seat posts that are cut to fit be excluded from the marking requirement because there is no way to determine where the mark should be.

(Response 4)—We decline to grant the commenter's request to exclude seat posts that are cut to fit from the requirement. We believe that such an exclusion could result in a decrease in safety and that further work, such as testing and an examination of any existing standards that may be relevant, would be needed to consider the potential impact of such an exclusion. We will, however, consider the issue when we conduct a more thorough evaluation of the bicycle standards.

(Comment 5)—One commenter remarked on the number of accidents that the commenter has witnessed resulting from bicycles seats being raised too high. The commenter would require manufacturers to insert a marking that will indicate a safe seat height level.

(Response 5)—The pre-existing regulations already require such marking. Consequently, no revision to the final rule is necessary with respect to this comment.

G. Tests and Test Procedures (§ 1512.18)

The proposed rule would amend § 1512.18(k)(1)(i), which describes the procedure for conducting the fork test. The test procedure requires, in relevant part, that the load on the fork "be increased until a deflection of 64 mm (2 ½ in) is reached." The test criteria, which are specified at § 1512.18(k)(1)(ii), explain that "[e]nergy of at least 39.5 J (350 in-lb) shall be absorbed with a deflection in the direction of the force of no more than 64 mm (2½ in.)." Thus, the fork test involves applying a load to the fork, and the fork must absorb the required energy while not deflecting more than 64 millimeters, or 2.5 inches.

The proposed rule would delete the last sentence of § 1512.18(k)(1)(i), regarding a deflection of 64 millimeters (2.5 inches), because § 1512.18(k)(1)(i) may be interpreted (incorrectly) as conflicting with § 1512.18(k)(1)(ii). In other words, a reader might construe the regulations as requiring force to be applied until the fork is deflected to 64 millimeters or 2.5 inches.

The proposed rule also would amend the reflector performance test description at § 1512.18(n)(2)(vii). The reflector performance test description

discusses a coordinate system used for the reflector performance test and states that "[i]n the coordinate system and when illuminated by the source defined in table 4 of this part 1512, a reflector will be considered to be red if its color falls within the region bounded by the red spectrum locus and the lines y0.980—x and y0.335; a reflector will be considered to be amber if its color falls within the region bounded by the yellow spectrum locus and the lines y0.382, y0.790 − 0.667x, and y x— 0.120." The y and x coordinates, as described in the rule, omitted important mathematical symbols or duplicated other mathematical symbols. The proposal would revise § 1512.18(n)(2)(vii) to read "[i]n the coordinate system and when illuminated by the source defined in table 4 of this part 1512, a reflector will be considered to be red if its color falls within the region bounded by the red spectrum locus and the lines y = 0.980 − x and y = 0.335; a reflector will be considered to be amber if its color falls within the region bounded by the yellow spectrum locus and the lines y = 0.382, y = 0.790 − 0.667x, and y = x − 0.120."

Section 1512.18(n)(2)(vii) also refers to the "*IES Lighting Handbook,* fifth edition, 1972," and a footnote to the rule explains that the *IES Lighting Handbook* may be obtained from the Illuminating Engineering Society (IES) and gives an address for IES. The reference to the *IES Lighting Handbook* is outdated, as is the address for the IES. More importantly, the recommended coordinate system for definition of color discussed in § 1512.18(n)(2)(vii), the "Internationale de l-Eclairage (CIE) 1931" system, is readily accessible for little or no cost from various sources in addition to the IES, including the Internet. Because the CIE 1931 color coordinate system is publicly available, the reference to the *IES Lighting Handbook* is not necessary, and therefore, the proposed rule would delete the reference to the *IES Lighting Handbook* and its accompanying footnote.

We received no comments on these provisions and have finalized them without change.

H. Additional Changes Requested by the Comments

1. Introduction

Several commenters suggested additional revisions to the bicycle regulations. We discuss those comments, and our responses, in this section.

2. Requirements for Braking Systems: Handbrakes and Grip Dimension (§ 1512.5(b)(3))

(Comment 6)—One commenter asked that we change the requirement for the brake lever grip dimension. Currently, the grip dimension, which is defined as the maximum outside dimension between the brake hand lever and the handlebars, shall not exceed 89 mm (3.5 inches). The commenter would change the maximum to 100 mm (4.0 inches) to accommodate new bicycle designs that include gear shift mechanisms on the lever. The commenter stated that, because of the need to accommodate the added shifting mechanism and allow space for the rider's hands, the brake lever portion of the combination brake/shift lever may be slightly farther away from the handlebar.

(Response 6)—We decline to revise § 1512.5(b)(3) because such an exclusion could result in a decrease in safety and that further work, such as testing and an examination of any existing standards that may be relevant, would be needed to consider the potential impact of the commenter's suggested change. Thus, we will consider the commenter's suggestion when we undertake a more thorough evaluation of the bicycle standards.

3. Requirements for Braking Systems (§ 1512.5) and Tests and Tests Procedures (§ 1512.18)

(Comment 7)—Two commenters would revise the requirements for braking system testing. One commenter stated that he had prepared a written explanation as to why we should revise the braking standard, but the explanation was deleted. Another commenter would revise the braking system test requirements to require: (1) Bicycles to be tested under wet conditions that might result in longer stopping time; (2) a "front brake modulation test" that would determine if the front brakes of a bicycle have a propensity to grab abruptly which could result in riders being thrown over the handlebars; and (3) a brake fade test to predict the loss of braking power when a rider is descending a hill, and brakes overheat.

(Response 7)—We agree, generally, that braking system testing requirements should be evaluated and revised. However, we decline to address this issue in the final rule. This rulemaking was intended, in part, to facilitate the testing and certification requirements of section 14 of the Consumer Product Safety Act (CPSA). Changing these standards would involve, among other things, an examination of any relevant existing standards and possibly the development of new testing regimes or an analysis of existing testing regimes already in use. It would be more efficient and more appropriate to consider such issues when we undertake a more thorough evaluation of the bicycle standards.

4. Requirements for Pedals (§ 1512.7)

(Comment 8)—Two commenters addressed clipless pedals, which are products that attach directly to the cleat of a cyclist's shoe. One commenter would have us define the term "clipless pedal," and both commenters would have us exempt clipless pedals from the requirement that pedals have reflectors. (Clipless pedals do not have the traditional platform or cage to support the foot and are not easily fitted with reflectors.)

(Response 8)—We acknowledge that reflectors cannot be installed on a clipless pedal. However, removing a reflector from a bicycle may result in a decrease in safety. Changing the standard would involve, among other things, an examination of any relevant existing standards and possibly the development of new testing regimes or an analysis of existing testing regimes already in use. It would be more efficient and more appropriate to consider such issues when we undertake a more thorough evaluation of the bicycle standards.

(Comment 9)—One commenter sought an exemption for clipless pedals from the tread requirement, stating that "it is not feasible to place treads on the pedals, as there is very little space."

(Response 9)—We are aware of these concerns, but decline to address them in the final rule. Changing the standard would involve, among other things, an examination of any relevant existing standards and possibly the development of new testing regimes or an analysis of existing testing regimes already in use. It would be more efficient and more appropriate to consider such issues when we undertake a more thorough evaluation of the bicycle standards.

5. Requirements for Protective Guards (§ 1512.9 (b))

(Comment 10)—One commenter would revise the requirement for derailleur guards at § 1512.9(b). The derailleur guard requirement is designed to prevent the drive chain from interfering with or stopping the rotation of the wheel through improper adjustments or damage. The commenter said that some bicycle models (specifically those that experienced cyclists are likely to use) lack room for a derailleur guard.

(Response 10)—We are aware of this concern, but decline to address it in the final rule. The derailleur guard is intended to protect the rider from an accident should the drive chain interfere with the wheel because of improper adjustments or damage. Changing the standard would involve, among other things, an examination of any relevant existing standards and possibly the development of new testing regimes or an analysis of existing testing regimes already in use. It would be more efficient and more appropriate to consider such issues when we undertake a more thorough evaluation of the bicycle standards.

6. Component Failures due to Material Fatigue (§ 1512.17(a))

(Comment 11)—One commenter asked us to evaluate component failures that are caused by material fatigue, which the commenter defined as the weakening and subsequent fracture of the material due to repeated stress.

(Response 11) We agree that testing component parts that fail because of material fatigue is an important issue that should be evaluated and revised. However, we decline to address this in the final rule. Changing the standard would involve, among other things, an examination of any relevant existing standards and possibly the development of new testing regimes or an analysis of existing testing regimes already in use. Thus, we will consider the matter when we undertake a more thorough evaluation of the bicycle standards.

I. Miscellaneous Comments

Several commenters addressed the proposed rule in general terms or addressed matters that were outside the scope of the proposed rule.

(Comment 12)—Three commenters agreed with the proposed rule in its existing form. One of the commenters, while pleased with the proposed rule at this point, urged us to review and assess the bicycle requirements in greater depth. In contrast, one commentator was opposed to the proposed rule because we did not conduct a more comprehensive review of the bicycle regulations. The commenter said that manufacturers are "forced into a testing regime."

(Response 12)—Section 14 of the CPSA requires manufacturers and private labelers of a product subject to a CPSC rule, ban, standard, or regulation to certify compliance of the product with such rule, ban, standard, or regulation. As we stated in the preamble to the proposed rule (75 FR at 67043), we issued the proposed rule, in part, to facilitate the testing and certification required by section 14 of the CPSA. We also acknowledged that a more extensive review of the bicycle regulations is necessary (75 FR at 67044), but that we cannot accomplish such a review in the timeframe that is necessary for implementing the testing and certification requirements of section 14 of the CPSA. We will conduct a more extensive review of the bicycle regulations as time and resources permit.

(Comment 13)—One commenter noted that there is a typographical error in a CPSC Regulatory Summary for 16 CFR part 1512. In a description of the requirement for chains and chain guards, the document incorrectly substitutes "90%" for "90 degrees."

(Response 13)—CPSC Regulatory Summaries are found on our Web site and are not part of the rule. Nevertheless, we are examining our regulatory summaries and intend to revise or, in some cases, delete them to reflect current requirements and new information.

(Comment 14)—One commenter expressed concern that the proposed rule might create an obligation for bicycle manufacturers to produce new parts.

(Response 14)—Nothing in the proposed rule or the final rule requires a bicycle manufacturer to produce new parts to the meet the requirement.

(Comment 15)—One commenter expressed concern over lead content in children's bicycles.

(Response 15)—If a bicycle is a "children's product" as defined by section 3(a)(2) of the CPSA, then it is subject to the lead content limit in section 101(a)(2) of the CPSIA. We note, however, that there is a stay of enforcement in place regarding lead content in certain parts of children's bicycles. In the **Federal Register** of June 30, 2009 (74 FR 31254), the Commission issued a stay of enforcement until June 1, 2011 with regard to the lead content in certain parts of bicycles designed or intended primarily for children 12 years of age or younger. The Commission approved the stay in order to allow time to develop rules and requirements which will address the very specific questions regarding lead content in children's bicycles. In the **Federal Register** of February 8, 2011 (76 FR 6765), the Commission extended the stay of enforcement until December 31, 2011.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires the Commission to evaluate the economic impact of rules on small entities. The RFA defines small entities to include small businesses, small organizations, and small governmental jurisdictions. The small entities relevant to this rule are small businesses. It should be noted that we did not receive any comments related to the economic impact of the proposed rule.

We conclude that the final rule will not have a significant economic impact. The amendments make minor changes to the existing regulations to reflect new technologies, designs and features in bicycles by clarifying that certain provisions or testing requirements do not apply to specific bicycles or bicycle parts. The amendments clarify several ambiguous and confusing provisions. The final rule also corrects typographical errors, and deletes an outdated reference.

These changes are not expected to result in product modifications in order to comply and do not require any additional testing or recordkeeping burdens. The clarifications and exceptions resulting from the amendments could result in modest cost savings to small businesses in the form of more focused testing or the elimination of unnecessary testing.

Accordingly, the Commission determines that the final rule will not have a significant economic effect on a substantial number of small entities.

IV. 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 the collection of information, including publishing a summary of the collection of information and a brief description of the need for, and proposed use of, the information.

This final rule does not implicate the PRA, because there are no collection of information obligations associated with the proposed amendments to part 1512.

V. Environmental Considerations

The final rule falls within the scope of the Commission's environmental review regulations at 16 CFR 1021.5(c)(1), which provide a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for amendments of rules or safety standards that provide design or performance requirements for products.

List of Subjects in 16 CFR Part 1512

Bicycles, Consumer protection, Labeling.

For the reasons discussed in the preamble, the Consumer Product Safety Commission amends 16 CFR part 1512 as follows:

PART 1512—REQUIREMENTS FOR BICYCLES

■ 1. The authority citation for part 1512 continues to read as follows:

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended, 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262); Pub. L. 107–319, 116 Stat. 2776.

■ 2. Amend § 1512.2 by revising paragraphs (b) and (d) and adding paragraph (g) to read as follows:

§ 1512.2 Definitions.

* * * * *

(b) *Sidewalk bicycle* means a bicycle with a seat height of no more than 635 mm (25.0 in); the seat height is measured with the seat adjusted to its highest position. Recumbent bicycles are not included in this definition.

* * * * *

(d) *Track bicycle* means a bicycle designed and intended for sale as a competitive velodrome machine having no brake levers or calipers, single crank-to-wheel ratio, and no free-wheeling feature between the rear wheel and the crank.

* * * * *

(g) *Recumbent bicycle* means a bicycle in which the rider sits in a reclined position with the feet extended forward to the pedals.

■ 3. Amend § 1512.4 by revising paragraphs (b) and (i) to read as follows:

§ 1512.4 Mechanical requirements.

* * * * *

(b) *Sharp edges.* There shall be no unfinished sheared metal edges or other sharp parts on assembled bicycles that are, or may be, exposed to hands or legs; sheared metal edges that are not rolled shall be finished so as to remove any feathering of edges, or any burrs or spurs caused during the shearing process.

* * * * *

(i) *Control cable ends.* Ends of all accessible control cables shall be provided with protective caps or otherwise treated to prevent unraveling. Protective caps shall be tested in accordance with the protective cap and end-mounted devices test, § 1512.18(c), and shall withstand a pull of 8.9 N (2.0 lbf).

* * * * *

■ 4. Amend § 1512.6 by revising paragraphs (a) and (c) to read as follows:

§ 1512.6 Requirements for steering system.

(a) *Handlebar stem insertion mark.* Quill-type handlebar stems shall contain a permanent ring or mark which clearly indicates the minimum insertion depth of the handlebar stem into the fork assembly. The insertion mark shall not affect the structural integrity of the stem and shall not be less than 2½ times the stem diameter from the lowest point of the stem. The stem strength shall be maintained for at least a length of one shaft diameter below the mark.

* * * * *

(c) *Handlebar.* Handlebars shall allow comfortable and safe control of the bicycle. Handlebar ends shall be symmetrically located with respect to the longitudinal axis of the bicycle and no more than 406 mm (16 in) above the seat surface when the seat is in its lowest position and the handlebar ends are in their highest position. This requirement does not apply to recumbent bicycles.

* * * * *

■ 5. Amend § 1512.12 by revising paragraph (b) to read as follows:

§ 1512.12 Requirements for wheel hubs.

* * * * *

(b) *Quick-release devices.* Lever-operated, quick-release devices shall be adjustable to allow setting the lever position for tightness. Quick-release levers shall be clearly visible to the rider and shall indicate whether the levers are in a locked or unlocked position. Quick-release clamp action shall emboss the frame or fork when locked, except on fiber reinforced plastics.

* * * * *

■ 6. Amend § 1512.15 by revising paragraphs (a) and (b) to read as follows:

§ 1512.15 Requirements for seat.

(a) *Seat limitations.* No part of the seat, seat supports, or accessories attached to the seat shall be more than 125 mm (5.0 in) above the top of the seat surface at the point where the seat surface is intersected by the seat post axis. This requirement does not apply to recumbent bicycles.

(b) *Seat post.* The seat post shall contain a permanent mark or ring that clearly indicates the minimum insertion depth (maximum seat-height adjustment); the mark shall not affect the structural integrity of the seat post. This mark shall be located no less than two seat-post diameters from the lowest point on the post shaft, and the post strength shall be maintained for at least a length of one shaft diameter below the mark. This requirement does not apply to bicycles with integrated seat masts, however, a permanent mark or other means to clearly indicate that the seat or seat posts is safely installed shall be provided.

* * * * *

■ 7. Amend § 1512.18 by revising paragraphs (k)(1)(i) and (n)(2)(vii) as follows:

§ 1512.18 Tests and test procedures.

* * * * *

(k) * * *

(1) * * *

(i) *Procedure.* With the fork stem supported in a 76 mm (3.0 in) vee block and secured by the method illustrated in figure 1 of this part 1512, a load shall be applied at the axle attachment in a direction perpendicular to the centerline of the stem and against the direction of the rake. Load and deflection readings shall be recorded and plotted at the point of loading.

* * * * *

(n) * * *

(2) * * *

(vii) A recommended coordinate system for definition of color is the "Internationale de l'Eclairage (CIE 1931)" system. In the coordinate system and when illuminated by the source defined in table 4 of this part 1512, a reflector will be considered to be red if its color falls within the region bounded by the red spectrum locus and the lines $y = 0.980 - x$ and $y = 0.335$; a reflector will be considered to be amber if its color falls within the region bounded by the yellow spectrum locus and the lines $y = 0.382$, $y = 0.790 - 0.667x$, and $y = x - 0.120$.

* * * * *

Dated: May 10, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–11742 Filed 5–12–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2011–N–0003]

Implantation or Injectable Dosage Form New Animal Drugs; Gonadotropin Releasing Factor-Diphtheria Toxoid Conjugate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for the veterinary prescription use of gonadotropin releasing factor-diphtheria toxoid conjugate by subcutaneous injection for temporary immunological castration (suppression of testicular function) and reduction of boar taint in intact male pigs intended for slaughter.

DATES: This rule is effective May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Matthew Lucia, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8116, *e-mail: matthew.lucia@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed NADA 141–322 that provides for the veterinary prescription use of IMPROVEST (gonadotropin releasing factor-diphtheria toxoid conjugate) Sterile Solution for Injection for temporary immunological castration (suppression of testicular function) and reduction of boar taint in intact male pigs intended for slaughter. The application is approved as of March 22, 2011, and the regulations are amended in 21 CFR part 522 to reflect approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning on the date of approval.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 522.1083 to read as follows:

§ 522.1083 Gonadotropin releasing factor-diphtheria toxoid conjugate.

(a) *Specifications.* Each milliliter (mL) of solution contains 0.2 milligrams (mg) gonadotropin releasing factor-diphtheria toxoid conjugate.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

(c) *Conditions of use in swine*—(1) *Amount.* Administer 0.4 mg per intact male pig (2 mL) by subcutaneous injection no earlier than 9 weeks of age. A second subcutaneous injection of 0.4 mg per intact male pig (2 mL) should be administered at least 4 weeks after the first dose. Pigs should be slaughtered no earlier than 4 weeks and no later than 8 weeks after the second dose.

(2) *Indications for use.* For the temporary immunological castration (suppression of testicular function) and reduction of boar taint in intact male pigs intended for slaughter.

(3) *Limitations.* Not approved for use in female pigs and barrows. Do not use in intact male pigs intended for breeding because of the disruption of reproductive function. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 4, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–11762 Filed 5–12–11; 8:45 am]

BILLING CODE 4160–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in June 2011. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 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: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for June 2011.[1]

The June 2011 interest assumptions under the benefit payments regulation will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

assumptions in effect for May 2011, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during June 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 212, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
212	6–1–11	7–1–11	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 212, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
212	6–1–11	7–1–11	2.50	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of May 2011.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–11846 Filed 5–12–11; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2011–0046; 1625–AA08]

Special Local Regulations for Marine Events; Severn River, Spa Creek and Annapolis Harbor, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the swim segment of the "TriRock Annapolis" triathlon, a marine event to be held on the waters of Spa Creek and Annapolis Harbor on May 14, 2011. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of Spa Creek and Annapolis Harbor during the event.

DATES: This rule is effective from 6 a.m. until 9 a.m. on May 14, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0046 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0046 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 17, 2011, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Severn River, Spa Creek and Annapolis Harbor, Annapolis, MD" in the **Federal Register** (76 FR 33). We received no comments

on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment against the hazards associated with vessels operating in the immediate vicinity of a large group of swimmers on confined navigable waters. Such hazards include injuries or death caused by vessel strikes and navigational obstructions and hazards caused by swimmers in the navigable channel. Delaying this already-planned and already-announced event to accommodate a 30-day delayed effective date is contrary to the public interest. In addition, during the 30-day comment period on the proposed rule, no comments were received. Delaying the effective date would be contrary to the regulated area's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

On Saturday, May 14, 2011, Competitor Group Inc. of San Diego, California, will sponsor the "TriRock Annapolis" triathlon in Annapolis, Maryland. The swim segment of the event will occur from 7 a.m. to 8:30 a.m. and will be located in Spa Creek and Annapolis Harbor. Up to 2,000 swimmers will operate on a 500-meter course located between the Annapolis City Dock and the confluence of the Spa Creek with the Severn River. The swimmers will be supported by sponsor-provided watercraft. The start and finish will be located at the Annapolis City Dock. A portion of the swim course will impede the federal navigation channel. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will prevent traffic from transiting a portion of the Spa Creek and Annapolis Harbor during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the affected portions of the Spa Creek and Annapolis Harbor during the event.

Although this regulation prevents traffic from transiting a portion of the Spa Creek and Annapolis Harbor during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Though the regulated area extends across the entire width of the waterway, this proposed rule would be in effect for only a limited period; and before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–0046 to read as follows:

§ 100.35–T05–0046 Special Local Regulations for Marine Events; Severn River, Spa Creek and Annapolis Harbor, Annapolis, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Spa Creek and Annapolis Harbor, within lines connecting the following positions: from position latitude 38°58′34″ N, longitude 076°29′05″ W, thence to position latitude 38°58′27″ N, longitude 076°28′55″ W, and from position latitude 38°58′53″ N, longitude 076°28′34″ W to position latitude 38°58′21″ N, longitude 076°28′26″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement period: This section will be enforced from 6 a.m. until 9 a.m. on May 14, 2011.

Dated: April 20, 2011.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2011–11729 Filed 5–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0160]

RIN 1625–AA08

Special Local Regulation; Allegheny River, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation from the Point State Park (mile marker 0.0) to the River Rescue station (mile marker 0.5) on the Allegheny River, extending 200 feet out

from the right descending bank. The special local regulation is being established to safeguard participants of the Venture Outdoors Festival from the hazards of marine traffic. Entry into, movement within, and departure from this Coast Guard regulated area, while it is activated and enforced, is prohibited, unless authorized by the Captain of the Port or a designated representative.

DATES: This proposed rule is effective from 10:30 a.m. until 6 p.m. on May 21, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0160 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0160 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail ENS Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412–644–5808 Ext. 2140, e-mail *Robyn.G.Hoskins@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). Publishing a NPRM would be impracticable with respect to this rule because immediate action is needed to safeguard participants during the Venture Outdoors Festival marine event from the hazards imposed by marine traffic. The date of the Venture Outdoors Festival is tied to numerous other events and cannot be changed at this time. In addition, because the regulation is for one day only, applies to a small portion of the river and will not impede navigation of the river, the Coast Guard believes that the restriction on marine traffic will be so minimal as to make full notice & comment procedures unnecessary.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be impracticable based on the short notice received for the event and the short period that the special local regulation will be in place. Immediate action is needed to provide safety and protection during the Venture Outdoors Festival marine event that will occur in the city of Pittsburgh, PA. The date of the Venture Outdoors Festival is tied to numerous other events and cannot be changed at this time. In addition, because the regulation is for one day only, applies to a small portion of the river and will not impede navigation of the river, the Coast Guard believes that the restriction on marine traffic will be so minimal as to make full notice & comment procedures unnecessary.

Basis and Purpose

The Coast Guard is establishing a temporary special local regulation from the Point State Park (mile marker 0.0) to the River Rescue station (mile marker 0.5) on the Allegheny River, extending 200 feet out from the right (descending bank. The special local regulation is being established to safeguard participants of the Venture Outdoors Festival from the hazards of marine traffic.

Discussion of Rule

The Captain of the Port Pittsburgh is establishing a temporary special local regulation from the Point State Park (mile marker 0.0) to the River Rescue station (mile marker 0.5) on the Allegheny River, extending 200 feet out from the right descending bank. The special local regulation is being established to safeguard participants of the Venture Outdoors Festival from the hazards of marine traffic that will occur in the city of Pittsburgh, PA. Persons or vessels shall not enter into, depart from, or move within the regulated area without permission from the Captain of the Port Pittsburgh or his authorized representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule is effective from 10:30 a.m. to 6 p.m. on May 21, 2011. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule will only be in effect for less than one day and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit that portion of the waterways from the Point State Park (mile marker 0.0) to the River Rescue station (mile marker 0.5) on the Allegheny River, from 10:30 a.m. to 6 p.m. on May 21, 2011. The special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for less than one day.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h.), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. Under figure 2–1, paragraph (34)(h.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T08–0160 to read as follows:

§ 100.T08–0160 Special Local Regulation; Allegheny River, Pittsburgh, PA.

(a) *Location.* The following area is a regulated area: All waters of the Allegheny River, from surface to bottom, from mile marker 0.0 to mile marker 0.5, extending 200 feet out from the right descending bank. These markings are based on the USACE's *Allegheny River Navigation Charts* (Chart 1, January 2004).

(b) *Periods of Enforcement.* This rule will only be enforced from 10:30 a.m. through 6 p.m. on May 21, 2011. The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of changes to the enforcement period for the regulated area.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of

this part, entry into this regulated area is prohibited unless authorized by the Captain of the Port Pittsburgh.

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

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

Dated: April 8, 2011.

R.V. Timme,

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

[FR Doc. 2011–11785 Filed 5–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0325]

RIN 1625–A008

Safety Zone; 2011 Memorial Day Tribute Fireworks, Lake Charlevoix, Boyne City, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Charlevoix near Boyne City, Michigan. This zone is intended to restrict vessels from a portion of Lake Charlevoix due to a fireworks display. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective from 10 p.m. until 10:45 p.m. on May 28, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0325 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0325 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 Aaron Woof, U.S. Coast Guard, Sector Sault Sainte Marie, telephone 906–253–2423, e-mail at *Aaron.M.Woof@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Delaying this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable and contrary to the public interest.

Background and Purpose

On May 28, 2011 fireworks will be launched from a point on Lake Charlevoix to commemorate Memorial Day. The Captain of the Port, Sector Sault Sainte Marie, has determined that the Memorial Day Tribute Fireworks Display will pose significant risks to the public. The likely congested waterways in the vicinity of a fireworks display could easily result in serious injuries or fatalities.

Discussion of Rule

To mitigate the risks associated with the Memorial Day Tribute Fireworks Display, the Captain of the Port, Sector Sault Sainte Marie will enforce a temporary safety zone in the vicinity of the launch site. This safety zone will encompass all waters of Lake Charlevoix, in the vicinity of Sommerset Pointe, within the arc of a circle with an 800ft radius from the fireworks launch site located on a barge positioned 45°13′04″ N, 085°03′41″ W [DATUM: NAD 83].

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone will be relatively small and will exist for only a minimal time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by proper authority.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small

entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Charlevoix between 10 p.m. and 10:45 p.m. on May 28, 2010.

This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. Vessels may safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Sault Sainte Marie, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0325 to read as follows:

§ 165.T09–0325 Safety Zone; 2011 Memorial Day Tribute Fireworks, Lake Charlevoix, Boyne City, Michigan.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of Lake Charlevoix, in the vicinity of Sommerset Pointe, within the arc of a circle with a 800-foot radius from a fireworks launch site located on a barge at position 45°13′04″ N, 085°03′41″ W [DATUM: NAD 83].

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 10:00 p.m. until 10:45 p.m. on May 28, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter the or operate within the safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative.

Dated: May 2, 2011.

J.C. Mcguiness.

Captain, U.S. Coast Guard Captain of the Port Sault Sainte Marie.

[FR Doc. 2011–11807 Filed 5–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0342]

Security and Safety Zone Regulations, Large Passenger Vessel Protection, Captain of the Port Columbia River Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the security and safety zone in 33 CFR 165.1318 for large passenger vessels operating in the Captain of the Port, Columbia River Zone intermittently between the months of May and September 2011. This action is necessary to ensure the security and safety of the large passenger vessels, including their crew and passengers, as well as the maritime public. During the enforcement period, no person or vessel may enter the security and safety zone without permission from the Captain of the Port Columbia River.

DATES: The regulations in 33 CFR 165.1318 will be enforced during the following dates and times for the vessels noted:

(1) LPV Westerdam: From 6:30 a.m. May 4, 2011 through 12 a.m. (midnight) May 5, 2011.

(2) LPV Norwegian Pearl: From 6:30 a.m. May 5, 2011 through 12 a.m. (midnight) on May 6, 2011.

(3) LPV Millenium: From 7:30 a.m. May 9, 2011 through 12 a.m. (midnight) on May 10, 2011.

(4) LPV Sapphire Princess: From 5:30 a.m. May 11, 2011 through 12 a.m. (midnight) on May 12, 2011.

(5) LPV Seven Seas Navigator: From 6:30 a.m. May 15, 2011 through 12 a.m. (midnight) on May 16, 2011.

(6) LPV Island Princess: From 5:30 a.m. May 16, 2011 through 12 a.m. (midnight) on May 17, 2011.

(7) LPV Century: From 6:30 a.m. May 19, 2011 through 12 a.m. (midnight) on May 20, 2011.

(8) LPV Statendam: From 6:30 a.m. May 20, 2011 through 12 a.m. (midnight) on May 21, 2011.

(9) LPV Regatta: From 10:30 a.m. May 24, 2011 through 12 a.m. (midnight) on May 25, 2011.

(10) LPV Regatta: From 6:30 a.m. May 28, 2011 through 12 a.m. (midnight) on May 29, 2011.

(11) LPV Regatta: From 6:30 a.m. August 24, 2011 through 12 a.m. (midnight) on August 25, 2011.

(12) LPV Regatta: From 10:30 a.m. September 7, 2011 through 12 a.m. (midnight) on September 8, 2011.

(13) LPV Seven Seas Navigator: From 7:30 a.m. September 10, 2011 through 12 a.m. (midnight) on September 11, 2011.

(14) LPV Zuiderdam: From 10:30 a.m. September 25, 2011 through 12 a.m. on September 26, 2011.

(15) LPV Norwegian Pearl: From 7:30 a.m. September 26, 2011 through 12 a.m. (midnight) on September 27, 2011.

(16) LPV Norwegian Pearl: From 6:30 a.m. September 27, 2011 through 12 a.m. (midnight) on September 28, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail MST1 Jaime Sayers, Coast Guard Marine Safety Unit Portland; telephone 503–240–9327, e-mail *Jaime.a.Sayers@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety and security zone regulation in 33 CFR 165.1318 for large passenger vessels operating in the Columbia River Captain of the Port Zone during the dates and times listed in **DATES**.

Under the provisions of 33 CFR 165.1318 and 33 CFR 165 Subparts C and D, no person or vessel may enter or remain in the safety and security zone without permission of the Captain of the Port, Columbia River. Persons or vessels wishing to enter the safety and security zone may request permission to do so from the on-scene Captain of the Port representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1318 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with notification of this enforcement period via the Local Notice to Mariners.

Dated: May 3, 2011.

D.E. Kaup,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2011–11800 Filed 5–12–11; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 202, 203, and 211

[Docket No. 2011–4]

Registration and Recordation Program

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; technical amendments.

SUMMARY: The Copyright Office is making non-substantive amendments to its regulations to reflect a reorganization that has moved the Recordation function from the Visual Arts and Recordation Division of the Registration and Recordation Program to the Information and Records Division. As a result of this reorganization, the name of the Registration and Recordation Program has been changed to the Registration Program.

DATES: *Effective Date:* May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scheffler, Chief Operating Officer, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) (707–8350). Telefax: (202) (707–8366).

SUPPLEMENTARY INFORMATION: On February 13, 2011, the Copyright Office implemented a reorganization, commenced in December 2010, that moved the recordation function from the Visual Arts and Recordation Division of the Registration and Recordation Program to the Information and Records Division. As a result of the reorganization, the Registration and Recordation Program has been renamed the Registration Program. The Documents Recordation Team, which was part of the Visual Arts Division of the Registration and Recordation Program, has been renamed the Recordation Section of the Information and Records Division.

The Recordation Section processes the recordation of transfers of copyright ownership and other documents pertaining to a copyright under section 205 of the Copyright Act, the recordation of notices of termination of transfers and licenses under sections 203 and 304(c) and (d) of the Copyright Act, and designations of agents of online service providers to receive notification of claims of infringement under section 512(c) of the Copyright Act.

This reorganization better aligns and leverages the skill sets of Recordation staff with similar skill sets required of staff in the Records Research and Certification Section of the Information and Records Division. The Office believes that the reorganization will result in timelier processing of recordations and make the public record available in a more timely fashion.

Parts 202, 203, and 211 of the Copyright Office Regulations currently refer to the Registration and Recordation Program. In order to reflect the change in the name of the Program, the provisions of those parts of the regulations that refer to the Program are being amended to refer to the Registration Program. In addition, a typographical error in § 203.3(b)(2) is being corrected.

List of Subjects

37 CFR Part 202

Copyright registration.

37 CFR Part 203

Freedom of Information Act.

37 CFR Part 211

Mask work.

Final Rule

Accordingly, 37 CFR Chapter II is amended by making the following technical corrections and amendments:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

Authority: 17 U.S.C. 408(f), 702.

§ 202.5 [Amended]

■ 2. Amend § 202.5 by removing ″Registration and Recordation Program″ each place it appears and adding in its place ″Registration Program″.

§ 202.12 [Amended]

■ 3. Amend § 202.12(c)(4)(vi) by removing ″Registration and Recordation Program″ and adding in its place ″Registration Program″.

§ 202.19 [Amended]

■ 4. Amend § 202.19(e)(3) by removing ″Registration and Recordation Program″ and adding in its place ″Registration Program″.

§ 202.20 [Amended]

■ 5. Amend § 202.20 by removing ″Registration and Recordation Program″ each place it appears and adding in its place ″Registration Program″.

§ 202.21 [Amended]

■ 6. Amend § 202.21(h) introductory text by removing ″Registration and Recordation Program″ and adding in its place ″Registration Program″.

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 7. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702, 5 U.S.C. 552.

§ 203.3 [Amended]

■ 8. Amend § 203.3 as follows:
■ a. In paragraphs (b)(2) and (3) by removing ″Registration and Recordation Program″ and adding in its place ″Registration Program″; and
■ b. In paragraph (b)(2), by removing ″coyrightable″ and adding ″copyrightable″ in its place.

PART 211—MASK WORK PROTECTION

■ 9. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702, 908.

§ 211.5 [Amended]

■ 10. Amend § 211.5(d) by removing ″Registration and Recordation Program″ and adding in its place ″Registration Program″.

Dated: May 4, 2011.

Maria A. Pallante,

Acting Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 2011–11719 Filed 5–12–11; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–1028; FRL–9305–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) on October 27, 2010. This revision pertains to EPA's greenhouse gas (GHG) Prevention of Significant Deterioration (PSD) permitting provisions as promulgated on June 3, 2010 in the Tailoring Rule. The SIP revision modifies Virginia's PSD program to

establish appropriate emission thresholds for determining which new stationary sources and modifications become subject to Virginia's PSD permitting requirements for their GHG emissions. EPA is approving Virginia's SIP revision because the Agency has determined that this SIP revision is in accordance with the CAA and Federal regulations regarding PSD permitting for GHGs.

DATES: This final rule is effective on June 13, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–1028. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On January 12, 2011 (76 FR 2070), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of a new Chapter 85 of 9 VAC 5. The formal SIP revision was submitted by the VADEQ on October 27, 2010.

II. Summary of Virginia's SIP Revision

On October 27, 2010, VADEQ submitted a revision to EPA for approval into the Virginia SIP. This SIP revision would establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Virginia's PSD permitting requirements for GHG emissions. Final approval of Virginia's October 27, 2010, SIP revision puts in place the GHG emission thresholds for PSD applicability set forth in EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule—Final Rule" (the Tailoring Rule, 75 FR 31514, June 3, 2010) ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements.

III. What is the background for today's proposed action?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's final action. More detailed discussions of the background are found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,[1] and in the preambles to the actions cited in that rule.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action to approve Virginia's October 27, 2010 SIP revision. Four of these actions include, as they are commonly called, the Endangerment Finding and Cause or Contribute Finding, which EPA issued in a single final action,[2] the Johnson Memo Reconsideration,[3] the Light-Duty Vehicle Rule,[4] and the Tailoring Rule.[5] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

The PSD permitting program is implemented through the SIP, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a Federal Implementation Plan (FIP).[6] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the "error correction" provisions of CAA section 110(k)(6).

B. Virginia's Actions

On July 28, 2010, Virginia provided a letter to EPA, in accordance with an EPA request to all states in the Tailoring Rule, with confirmation that the Commonwealth of Virginia has the authority to regulate GHGs in its PSD program. The letter also confirmed that current Virginia rules require regulating GHGs at the 100/250 tpy threshold that generally applies to all air pollutants subject to PSD and that is provided under the CAA PSD provisions, section 169(1), rather than at the higher thresholds set in the Tailoring Rule. (*See* the docket for this rulemaking for a copy of Virginia's letter.)

In the SIP Narrowing Rule, published on December 30, 2010, EPA withdrew

[1] Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans; Final Rule. 75 FR 82536 (December 30, 2010).

[2] Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act. 74 FR 66496 (December 15, 2009).

[3] Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs. 75 FR 17004 (April 2, 2010).

[4] Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule. 75 FR 25324 (May 7, 2010).

[5] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

[6] Specifically, by notice dated December 13, 2010, EPA finalized a SIP Call that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," 75 FR 77698 (Dec. 13, 2010). EPA has begun making findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalizing FIPs for such states. *See,* e.g. "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases," 75 FR 81874 (December 29, 2010); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010). Because Virginia's SIP already authorizes Virginia to regulate GHGs, Virginia is not subject to the proposed SIP Call or FIP.

its approval of Virginia's SIP—among other SIPs—to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[7] As a result, Virginia's current federally approved SIP provides the state with authority to apply PSD to GHG-emitting sources and requires new and modified sources to receive a PSD permit based on GHG emissions, but only if those sources emit at or above the Tailoring Rule thresholds.

Virginia's October 27, 2010 SIP revision amends its SIP to put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule. EPA's approval of Virginia's October 27, 2010 incorporates these adopted by the Commonwealth into the Federally-approved SIP. Doing so will clarify the applicable thresholds in the Virginia SIP.

The basis for this SIP revision is that limiting PSD applicability to GHG sources which emit at or above the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that provide required assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that States provide "necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP]." In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,[8] and no State, including Virginia, asserted that it did have adequate resources to do so.[9] In the SIP Narrowing Rule, EPA found that the affected states, including Virginia, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.[10] Accordingly, for each affected state, including Virginia, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[11] EPA recommended that States adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.[12]

IV. EPA's Response to Comments Received on the Proposed Action

EPA received a single set of relevant comments on its January 12, 2011 (76 FR 2070) proposed action to approve revisions to Virginia SIP. These comments, provided by the Air Permitting Forum (hereinafter referred to as "the Commenter"), raised concerns with regard to EPA's January 12, 2011 proposed action. A full set of these comments is provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Generally, the adverse comments fall into four categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter expresses concerns regarding "EPA's statement that it may narrow its prior SIP approvals" to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under Federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that this SIP approval narrowing action would be "illegal."[13] Third, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "If EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by GHGs." EPA's response to these four categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter states: "[n]o area in the Commonwealth of Virginia has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting requirements." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Virginia to rescind that portion of its rules that would allow GHGs to trigger PSD."

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. Accordingly, these comments are not relevant to this rulemaking. In addition, EPA has explained in detail, in recent rulemakings concerning GHG PSD requirements, its reasons for disagreeing with these comments. For convenience, we briefly summarize these reasons here, although, again, we have not re-opened this issue in this rulemaking.

In an August 7, 1980 rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a "major stationary source" was one that emitted "any air pollutant subject to regulation under the Act" at or above the specified numerical thresholds; and defined a "major modification," in general, as a physical or operational change that increased emissions of "any pollutant subject to regulation under the Act" by more than an amount that EPA variously termed as *de minimis* or significant. In addition, in EPA's NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of "regulated NSR pollutant" [currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)], noted that EPA added this term based on a request from a commenter to "clarify which pollutants are covered under the PSD program" and explained that in addition to criteria pollutants for which a NAAQS has been established, "[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant." *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of "regulated NSR pollutant" includes "[a]ny pollutant that otherwise is subject to

[7] "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse-Gas Emitting Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

[8] Tailoring Rule, 75 FR 31517/1.

[9] SIP Narrowing Rule, 75 FR 82540/2.

[10] *Id.* at 82542/3.

[11] *Id.* at 82544/1.

[12] *Id.* at 82540/2.

[13] Although the Commenter discussed only the proposal to narrow, the final PSD SIP Narrowing Rule had been issued prior to when the commenter submitted its comments. EPA assumes these comments are intended to apply to the final PSD SIP Narrowing Rule.

regulation under the Act.″ *See* 40 CFR 52.21(b)(50)(d)(iv); *see also* 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter's underlying premise that PSD requirements were not triggered for GHGs when GHGs became subject to regulation as of January 2, 2011. As just noted, this has been well-established and discussed in connection with prior EPA actions, including, most recently, the Johnson Memo Reconsideration and the Tailoring Rule. In addition, EPA's January 12, 2011 proposed rulemaking notice provides the general basis for the Agency's rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The January 12, 2011 notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS and concluded that such an interpretation of the Act would contravene Congress's unambiguous intent. *See* 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response to Comments document (″Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments″), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules [″EPA's Response to Motions for Stay,″ *Coalition for Responsible Regulation* v. *EPA,* D.C. Cir. No. 09–1322 (and consolidated cases)], at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action.

Comment 2: The Commenter expresses concerns regarding the legality of narrowing prior SIP approvals if states cannot interpret their regulations to include the Tailoring Rule thresholds within the phrase ″subject to regulation.″

Response 2: While EPA does not agree with the Commenter's assertion that the narrowing approach that EPA proposed in the Tailoring Rule and finalized in the PSD SIP Narrowing Rule is illegal, the validity of the narrowing approach is irrelevant to the action that EPA is today taking for Virginia's October 27, 2010 SIP revision. EPA did not propose to narrow its approval of Virginia's SIP as part of its January 12, 2011 proposed action, and in today's final action, EPA is acting to approve a SIP revision submitted by Virginia and is not otherwise narrowing its approval of prior submitted and approved provisions in the Virginia SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory requirements and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Virginia, much less nationwide.

Response 3: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Virginia's October 27, 2010 SIP revision, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA's approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Furthermore, this action does not have Federalism implications that would make Executive Order 13132 applicable, because it merely approves a state rule implementing a Federal standard and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Finally, regarding the Commenter's assertion that EPA has ″never analyzed the costs and benefits of triggering PSD for stationary sources in Virginia, much less nationwide″, this comment is not relevant to the current action because this action is not triggering GHG PSD requirements.

Today's rule is a routine approval of a SIP revision, which approves state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled ″*VII. Comments on Statutory and Executive Order Reviews,*″ 75 FR 31601–31603, and ″*VI. What are the economic impacts of the final rule?,*″ 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, GHGs are already being regulated nationally, and PSD permitting for GHG emissions by Virginia is already authorized under the existing SIP. Today's action simply puts in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements.

Comment 4: The Commenter states that ″[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by GHGs.″ Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that ″EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Virginia SIP is limited to the extent to which the Federal requirements remain enforceable.″

Response 4: EPA believes that it is most appropriate to take actions that are consistent with the Federal regulations that are in place at the time the action is being taken. To the extent that any changes to Federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the D.C. Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc.* v. *EPA,* Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op.

at 3 (D.C. Cir. December 10, 2010) (order denying stay motions).

V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding Sec. 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Final Action

EPA is approving 9 VAC5 Chapter 85 as a revision to the Virginia SIP. EPA has determined that this SIP submittal is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

As discussed above, in the PSD SIP Narrowing Rule, EPA both narrowed its prior approval of a number of SIPs and asked that each affected state withdraw from EPA consideration the part of its SIP that is no longer approved, and stated that approval of a SIP revision incorporating the Tailoring Rule thresholds into a SIP would count as removing these no-longer-approved provisions. Today's SIP revision approval accomplishes exactly this. Because EPA is approving Virginia's changes to its air quality regulations to incorporate appropriate thresholds for GHG permitting applicability into Virginia's SIP, then paragraph (t) in § 52.2423 of 40 CFR part 52, as included in EPA's PSD SIP Narrowing Rule—which codifies EPA's limiting its approval of Virginia's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today's action, EPA is also amending Section 52.2423 of 40 CFR part 52 to remove this unnecessary regulatory language; the removal of this now-extraneous language is ministerial in nature.

VII. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule to approve Virginia's October 27, 2010 SIP revision does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to greenhouse gas permitting in Virginia may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 25, 2011.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding entries for Chapter 85, Sections 5–85–10, 5–85–40, 5–85–50; 5–85–60, and 5–85–70 after existing section 5–80–2240 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	* * * *	*	*	*
9 VAC 5, Chapter 85 Permits for Stationary Sources of Pollutants Subject to Regulation				
Part I Applicability				
5–85–10	Applicability	1/2/11	5/13/11 [Insert page number where the document begins].	
Part III Prevention of Significant Deterioration Permit Actions				
5–85–40	Prevention of Significant Deterioration Area Permit Actions.	1/2/11	5/13/11 [Insert page number where the document begins].	
5–85–50	Definitions	1/2/11	5/13/11 [Insert page number where the document begins].	
Part IV State Operating Permit Actions				
5–85–60	State Operating Permit Actions	1/2/11	5/13/11 [Insert page number where the document begins].	
5–85–70	Definitions	1/2/11	5/13/11 [Insert page number where the document begins].	
*	* * * *	*	*	*

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■ 3. In § 52.2423, paragraph (t) is removed.

[FR Doc. 2011–11710 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0999; FRL–9304–8]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on November 24, 2010, to revise the Indiana State Implementation Plan (SIP). The submission revises the Indiana Administrative Code (IAC) by amending and updating the definition of "References to the Code of Federal Regulations," to refer to the 2009 edition. The submission also makes a minor revision to the definition of "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" by deleting an outdated **Federal Register** citation.

DATES: This rule is effective on July 12, 2011, unless EPA receives adverse written comments by June 13, 2011. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0999 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0999. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

A. When did the State submit the requested SIP revision to EPA?

IDEM submitted the SIP revision on November 24, 2010.

B. Did Indiana hold public hearing on this SIP revision?

IDEM held a public hearing on June 2, 2010. IDEM did not receive any public comments concerning the SIP revision.

II. What revision did the State request be incorporated into the SIP?

The State has requested that SIP revision include: (1) updated references to the CFR at 326 IAC 1–1–3, and (2) the deletion of a reference to **Federal Register** citation at 326 IAC 1–2–48 to clarify that the compounds dimethyl carbonate and propylene carbonate are excluded from the definition of volatile organic compound (VOC).

Rule 326 IAC 1–1–3, definition of "References to the Code of Federal Regulations." IDEM updated the reference to the CFR in 326 IAC 1–1–3 from the 2008 edition to the 2009 edition. This is solely an administrative change that allows Indiana to reference a more current version of the CFR. By amending 326 IAC 1–1–3 to reference the most current version of the CFR, Title 326 of the IAC will be consistent and current with Federal regulations.

Rule 326 IAC 1–2–48, definition of "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds." IDEM has amended 326 IAC 1–2–48 to clarify the inclusion of two additional compounds to the list of compounds that are excluded from the definition of VOC by deleting language in section

(a)(1) that EPA had not previously approved and which unnecessarily cited a January 21, 2009 **Federal Register** notice (74 FR 3437). Rule 326 IAC 1–2–48 (a)(1) now clearly incorporates by reference the Federal regulation at 40 CFR 51.100(s)(1), which lists all the negligibly reactive compounds excluded from the definition of VOC, and does so without any additional qualifying citations.

III. What action is EPA taking today?

We are approving revisions to the Indiana SIP to: (1) Update the definition at 326 IAC 1–1–3, "References to the Code of Federal Regulations," to refer to the 2009 edition, and (2) delete language that references the **Federal Register** in 326 IAC 1–2–48(a)(1), that are redundant as a result of the update to the references to CFR.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective July 12, 2011 without further notice unless we receive relevant adverse written comments by June 13, 2011. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 12, 2011.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 3, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. In § 52.770 the table in paragraph (c) is amended by revising the entry for "Article 1. General Provisions" to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
	Article 1. General Provisions			
Rule 1. Provisions Applicable Throughout Title 326				
1–1–2	References to federal Act	6/24/1994	7/21/1997, 62 FR 38919.	
1–1–3	References to the Code of Federal Regulations	10/31/2010	5/13/2011, [Insert page number where the document begins].	
1–1–4	Severability		2/18/1982, 47 FR 6622.	
1–1–5	Savings clause		2/18/1982, 47 FR 6622.	
1–1–6	Credible evidence	3/16/2005	10/19/2005, 70 FR 60735.	
Rule 2. Definitions				
1–2–1	Applicability of definitions	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–2	"Allowable emissions" defined	6/24/1994	7/21/1997, 62 FR 38919.	
1–2–3	Air pollution control equipment	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–4	"Applicable state and federal regulations" defined	6/24/1994	7/21/1997, 62 FR 38919.	
1–2–5	"Attainment area" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–6	"Best available control technology (BACT)" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–7	"Bulk gasoline plant" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–8	"Bulk gasoline terminal" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–9	"Catalytic cracking unit" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–10	"Charging" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–11	"Charge port" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–12	"Clean Air Act" defined	6/24/1994	7/21/1997, 62 FR 38919.	
1–2–13	"Coal processing" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–14	"Coating line" defined	6/5/1991	3/6/1992, 57 FR 8082.	
1–2–16	"Coke oven battery" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–17	Coke Oven Topside	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–18	Coke-Side	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–18.5	"Cold cleaner degreaser" defined	5/18/1990	3/6/1992, 57 FR 8082.	
1–2–19	"Combustion for indirect heating" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–20	Commence Construction	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–21	Construction	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–21.5	"Conveyorized degreaser" defined	5/18/1990	3/6/1992, 57 FR 8082.	
1–2–22	Cutback asphalt	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–22.5	"Department" defined	1/21/1995	7/5/1995, 60 FR 34856.	
1–2–23	"Electric arc furnaces" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–24	EPA	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–25	Excess air	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–26	Existing facility	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–27	Facility	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–28	Farming operation	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–28.5	"Federally enforceable" defined	1/21/1995	7/5/1995, 60 FR 34856.	
1–2–29	Flare	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–29.5	"Freeboard height" defined	5/18/1990	3/6/1992, 57 FR 8082.	
1–2–29.6	"Freeboard ratio" defined	5/18/1990	3/6/1992, 57 FR 8082.	
1–2–30	Fugitive dust	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–31	Gas collector main	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–32	Gasoline	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–32.1	"Gooseneck cap" defined	6/11/1993	6/15/1995, 60 FR 31412.	
1–2–33	Governmental unit	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–33.1	"Grain elevator" defined	6/24/1994	7/21/1997, 62 FR 38919.	
1–2–33.2	"Grain terminal elevator" defined	6/24/1994	7/21/1997, 62 FR 38919.	
1–2–34	Incinerator	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–34.1	"Jumper pipe" defined	6/11/1993	6/15/1995, 60 FR 31412.	
1–2–35	Larry car	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–36	Lowest achievable emission rate	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–37	Luting material	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–38	Major facility	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–39	Malfunction	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–40	Material	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–41	Military specifications	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–42	Modification	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–43	Natural growth	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–44	Necessary preconstruction approvals for permits	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–45	New facility	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–46	Nonattainment areas	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–47	"Noncombustible container" defined	9/26/1980	11/5/1981, 46 FR 54943.	

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
1–2–48	"Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" defined.	10/31/2010	5/13/2011, [Insert page number where the document begins].	
1–2–49	Offtake piping	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–49.5	"Open top vapor degreaser" defined	5/18/1990	3/6/1992, 57 FR 8082.	
1–2–50	Oven door	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–51	"Owner or operator" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–52	"Particulate matter" defined	1/19/2005	10/19/2005, 70 FR 60735.	
1–2–52.2	"PM2.5" defined	1/19/2005	10/19/2005, 70 FR 60735.	
1–2–52.4	"PM10" defined	1/19/2005	10/19/2005, 70 FR 60735.	
1–2–54	Positive net air quality benefit	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–55	Potential emissions	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–56	Pre-carbonization	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–57	Primary chamber	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–58	Process	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–59	Process weight; weight rate	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–60	Pushing	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–61	"Push-side" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–62	"Qualified observer" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–62.1	"Quench car" defined	6/11/1993	6/15/1995, 60 FR 31412.	
1–2–63	Quenching	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–63.1	"Quench reservoir" defined	6/11/1993	6/15/1995, 60 FR 31412.	
1–2–63.2	"Quench tower" defined	6/11/1993	6/15/1995, 60 FR 31412.	
1–2–64	Reasonable further progress	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–64.1	"Reasonably available control technology" or "RACT" defined.	1/21/1995	7/5/1995, 60 FR 34856.	
1–2–65	Reconstruction	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–66	Regulated pollutant	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–67	Reid vapor pressure	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–68	Related facilities	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–69	Respirable dust	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–70	"Secondary chamber" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–71	"Shutdown condition" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–72	"Solvent" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–73	"Source" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–74	"Stack" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–75	"Standard conditions" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–76	"Startup condition" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–77	"Standpipe lid" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–80	"Tank wagon" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–81	"Temporary emissions" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–82	"Theoretical air" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–82.5	"Total suspended particulate" or "TSP" defined	1/19/2005	10/19/2005, 70 FR 60735.	
1–2–83	"Transfer efficiency" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–84	"Transport" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–85	"True vapor pressure" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–86	"Unclassifiable (unclassified) areas" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–87	"Underfire" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–88	"Vapor balance system" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–89	"Vapor control system" defined	9/26/1980	11/5/1981, 46 FR 54943.	
1–2–90	"Volatile organic compound" or "VOC" defined	5/26/2007	3/18/2008, 73 FR 14389.	
1–2–91	"Wood products" defined	9/26/1980	11/5/1981, 46 FR 54943.	
Rule 3. Ambient Air Quality Standards				
1–3–1	Applicability	.....	11/27/1981, 46 FR 57895.	
1–3–2	Sampling Methods and Analysis	.....	11/27/1981, 46 FR 57895.	
1–3–3	Quality assurance guidelines	.....	11/27/1981, 46 FR 57895.	
1–3–4	Ambient air quality standards	4/5/2006	10/31/2006, 71 FR 63699.	
Rule 5. Episode Alert Levels				
1–5–1	Air Pollution Forecast	.....	5/31/1972, 37 FR 10842.	
1–5–2	Air Pollution Alert	.....	5/31/1972, 37 FR 10842.	
1–5–3	Air Pollution Warning	.....	5/31/1972, 37 FR 10842.	
1–5–4	Air Pollution Emergency	.....	5/31/1972, 37 FR 10842.	
1–5–5	Termination	.....	5/31/1972, 37 FR 10842.	
Rule 6. Malfunctions				
1–6–1	Applicability	6/24/1994	7/21/1997, 62 FR 38919.	

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
1–6–2	Records; notice of malfunction	3/15/1984	5/3/1990, 55 FR 18604.	
1–6–3	Preventive maintenance plans	3/15/1984	5/3/1990, 55 FR 18604.	
1–6–4	Conditions under which malfunction not considered violation	3/15/1984	5/3/1990, 55 FR 18604.	
1–6–5	Excessive malfunctions; department actions	3/15/1984	5/3/1990, 55 FR 18604.	
1–6–6	Malfunction emission reduction program	3/15/1984	5/3/1990, 55 FR 18604.	
Rule 7. Stack Height Provisions				
1–7–1	Applicability	8/27/1980	3/12/1982, 47 FR 10824.	
1–7–3	Actual stack height provisions	8/27/1980	3/12/1982, 47 FR 10824.	
1–7–5	Exemptions; limitations	8/27/1980	3/12/1982, 47 FR 10824.	
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[FR Doc. 2011–11726 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0445; A–1–FRL–9305–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revised Carbon Monoxide Maintenance Plan for Lowell

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This SIP submittal contains revisions to the carbon monoxide (CO) maintenance plan for Lowell, Massachusetts. Specifically, Massachusetts has revised the contingency plan portion of the original maintenance plan. The intended effect of this action is to approve this revision to the Lowell CO maintenance plan. This action is being taken in accordance with the Clean Air Act.

DATES: *Effective Date:* This rule is effective on June 13, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2010–0445. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne K. McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109—3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa,gov.*

SUPPLEMENTARY INFORMATION:

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I. Background and Purpose

On April 14, 2010, the Massachusetts Department of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for Massachusetts. The SIP revision consists of a minor modification to the carbon monoxide (CO) maintenance plan for Lowell, Massachusetts. (A redesignation request and a maintenance plan for the Lowell CO nonattainment area were approved by EPA on February 19, 2002 (67 FR 7272).) The modification changes the triggering mechanism which will be used by the State to determine if contingency measures need to be implemented in Lowell.

On February 17, 2011, EPA proposed approval of this SIP revision (76 FR 9281). EPA received no comments on the proposed rulemaking.

II. What action is EPA taking?

EPA is approving revisions to the Lowell carbon monoxide maintenance plan submitted by the State of Massachusetts on April 14, 2010. Specifically, EPA is approving the State's modification of the portion of the maintenance plan used to determine when contingency measures need to be triggered to reduce CO concentrations in Lowell. This action will allow the discontinuation of CO monitoring in the Lowell maintenance area. Other specific requirements of the revised carbon monoxide plan for Lowell, Massachusetts and the rationale for EPA's proposed action are explained in the Notice of Proposed Rulemaking (NPR) and will not be restated here.

III. Summary of SIP Revision

On April 14, 2010, the Massachusetts Department of Environmental Protection submitted a SIP revision to EPA that contains a modification to its CO maintenance plan for the Lowell CO maintenance area. The modifications to the maintenance plan change the triggering mechanism by which contingency measures would be implemented and will allow the State to discontinue CO monitoring in the Lowell maintenance area. CO concentrations measured in Lowell have

been below the National Ambient Air Quality Standard (NAAQS) for nearly 25 years, and in recent years, maximum measured concentrations have been less than 30% of the 9 parts per million (ppm) 8-hour CO standard.[1] In this SIP revision, the State of Massachusetts is establishing an alternative triggering mechanism, which will rely on CO data from a nearby CO monitor in Worcester, Massachusetts (MA).

Under the previous maintenance plan, contingency measures in Lowell were triggered when a violation of the CO NAAQS was measured in Lowell. Under the revised maintenance plan, Massachusetts will rely on data from the Worcester CO monitor to determine when and if monitoring will be re-established in the Lowell maintenance area, and, in some circumstances, when contingency measures will be triggered in the Lowell maintenance area.

Massachusetts will discontinue CO monitoring in Lowell. Massachusetts DEP will continue to collect and review CO monitoring data from nearby Worcester, MA on an on-going basis. In the event the second highest CO concentration in any calendar year monitored in Worcester reaches 75 percent of the federal 1-hour or 8-hour NAAQS for CO (35 and 9 ppm, respectively), Massachusetts will, within 9 months of recording such concentrations, re-establish a CO monitoring site in Lowell consistent with EPA siting criteria, and resume analyzing and reporting those data. Massachusetts will continue to commit to implement its contingency program in Lowell in the event that a CO violation (the "contingency trigger") is monitored at the re-established Lowell monitoring site at any time during the maintenance period and to consider one or more of the other EPA-approved measures listed in the 2001 Maintenance Plan if necessary to reduce CO levels.

If the Worcester CO monitor measures a violation of the either the federal 1-hour or 8-hour NAAQS for CO, the contingency measures in 2001 Maintenance Plan for Lowell will be implemented in Lowell, as well as triggering contingency measures in Worcester under the terms of the existing Maintenance Plan for Worcester, until a re-established Lowell CO monitor shows that the area is in attainment of the CO standard.

When implementing contingency measures, Massachusetts will review and implement the measures necessary to remedy the violation, including transportation control measures (TCM) or other additional vehicle or fuel controls.

IV. Final Action

EPA is approving the revisions to the Lowell CO maintenance plan submitted by the State of Massachusetts on April 14, 2010. Specifically, EPA is approving the State's request to modify the portion of the maintenance plan used to determine when contingency measures need to be implemented in Lowell. As described in more detail above, the State will shut down the Lowell CO monitor and rely on data from the CO monitor in Worcester to determine when and if monitoring will be reestablished in the Lowell maintenance area, and, in some circumstances, when contingency measures will be triggered in the Lowell maintenance area.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference,

[1] On January 28, 2011, EPA proposed to retain the existing CO standard. In this action, EPA has also proposed an increase in near-road CO monitoring. Due to the low CO concentrations recorded at the Lowell monitor and applicable siting criteria, this monitor would not meet the requirements for a near-road monitor.

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 29, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1.

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

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

■ 2. Section 52.1132 is amended by adding paragraph (e) to read as follows:

§ 52.1132 Control strategy: Carbon Monoxide.

* * * * *

(e) *Approval*—On April 14, 2010, the Massachusetts Department of Environmental Protection submitted a modification to the Lowell maintenance plan approved in paragraph (c) of this section. Massachusetts will not conduct CO monitoring in Lowell, but instead commits to continue to collect and review CO monitoring data from nearby Worcester, MA on an on-going basis. In the event the second highest CO concentration in any calendar year monitored in Worcester reaches 75 percent of the federal 1-hour or 8-hour national ambient air quality standard for CO, Massachusetts will, within 9 months of recording such concentrations, re-establish a CO monitoring site in Lowell consistent with EPA citing criteria, and resume analyzing and reporting those data. Massachusetts commits to implement its contingency program in Lowell in the event that a CO violation is monitored at the re-established Lowell monitoring site at any time during the maintenance period. If the Worcester CO monitor measures a violation of either the federal 1-hour or 8-hour NAAQS for CO, contingency measures will be implemented in Lowell as well, until a re-established CO monitor in Lowell shows that the area is in attainment of the CO standard.

[FR Doc. 2011–11722 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2009–0669; FRL–8871–5]

RIN 2070–AB27

Modification of the Significant New Uses of 2-Propen-1-one, 1-(4-morpholinyl)-

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing an amendment to the significant new use rule (SNUR) under the Toxic Substances Control Act (TSCA) for 2–Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117–12–4). This action requires persons who intend to manufacture, import, or process the chemical substance for a use that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. EPA believes that this action is necessary because the chemical substance may be hazardous to human health. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective June 13, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0669. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Tracey Klosterman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2209; e-mail address: *klosterman.tracey@epa.gov*.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use 2-Propen-1-one, 1-(4-morpholinyl)-(CAS No. 5117–12–4). Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a modified

SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export the chemical substance that is the subject of a final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

II. Background

A. What action is the Agency taking?

EPA is finalizing an amendment to the SNUR for the chemical substance identified as 2-Propen-1-one, 1-(4-morpholinyl)- (PMN P–95–169; CAS No. 5117–12–4) codified at § 721.5185. This final action requires persons who intend to manufacture, import, or process the subject chemical substance for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity.

In addition, EPA is revising the name of the chemical substance as it appears at § 721.5185 to reflect the correct Chemical Abstracts (CA) Index name. 2-Propen-1-one, 1-(4-morpholinyl)- is the correct CA Index name for the chemical substance represented by CAS No. 5117–12–4 as it appears on the TSCA Inventory. The chemical name Morpholine, 4-(1-oxo-2-propenyl)-, which currently appears at § 721.5185, is a synonym for CAS No. 5117–12–4.

This rule was proposed in the **Federal Register** of November 5, 2010 (75 FR 68306) (FRL–8849–7). EPA received no public comments in response to the proposal. Therefore, the Agency is issuing a final SNUR as proposed that:

1. Revises the CA Index name for the chemical substance represented by CAS No. 5117–12–4 from Morpholine, 4-(1-oxo-2-propenyl)- to 2-Propen-1-one, 1-(4-morpholinyl)-.

2. Identifies those forms of the PMN substance that are exempt from the provisions of the SNUR. These exemptions apply to quantities of the PMN substance after it has been completely reacted (cured).

3. Revises the protection in the workplace requirements under § 721.63 to remove all requirements for respiratory protection.

4. Revises the hazard communication requirements under § 721.72 to remove all requirements pertaining to respiratory protection.

5. Revises the industrial, commercial, and consumer requirements under § 721.80 to remove all requirements pertaining to domestic manufacture, and aggregate manufacture and import volumes.

6. Removes all disposal requirements under § 721.85.

7. Removes all release to water requirements under § 721.90.

8. Revises the recordkeeping requirements under § 721.125 to reflect the aforementioned modified SNUR requirements.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit IV. of this document. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a modified SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance identified in a modified SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

III. Rationale and Objectives of the Rule

A. Rationale

Under the terms of the TSCA section 5(e) consent order for P–95–0169, the PMN submitter completed and submitted required testing for EPA review. Based on these new data, concerns remain for possible effects to the liver, testes, kidney, and blood from dermal exposure. However, EPA no longer has substantial human health concerns for mutagenicity and neurotoxicity. In addition, based on these data, Agency concerns for carcinogenicity by inhalation were reduced, and further mitigated by retaining the original consent order prohibition of industrial processing and use in a non-enclosed process and any use application methods that generate a vapor, mist, or aerosol form of the PMN substance. Finally, the Agency re-reviewed the environmental toxicity profile for the PMN substance and as a result of this evaluation could no longer make a "may present unreasonable risk" finding for releases of the PMN substance to surface waters. As a result of the aforementioned review, EPA issued a modified TSCA section 5(e) consent order, which became effective on May 9, 2006. These modifications to the consent order are the same being made to this SNUR and are described in Unit II.A.

In addition, the Agency received a SNUN (S–08–07) for the subject chemical substance. The significant new use identified in the notice was release to water for the generic (non-confidential) use of "contained use in energy production." The 90-day review period for the SNUN expired with the Agency not taking action on the "significant new use" of release of the substance to water. This decision by the Agency is consistent with the modifications made to the consent order for P–95–169 and today's SNUR.

Pursuant to § 721.185(a)(5) and as described in Unit II. of the proposed rule (see the **Federal Register** of

November 5, 2010 (75 FR 68306)), the Agency has examined new information and reexamined the test data and other information supporting its finding under section 5(e)(1)(A)(ii)(I) of TSCA for the chemical substance 2–Propen-1-one, 1-(4-morpholinyl)-. EPA determined that existing data no longer supports a finding that certain activities involving the substance "may present an unreasonable risk" of injury to human health and the environment required under section 5(e)(1)(A) of TSCA.

B. Objectives

EPA is issuing this modified SNUR for 2-Propen-1-one, 1-(4-morpholinyl)- (PMN P–95–169; CAS No. 5117–12–4) because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this final rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use for 2–Propen-1-one, 1-(4-morpholinyl)- subject to this modified SNUR, EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, taking into consideration the four bulleted TSCA section 5(a)(2) factors listed in this unit.

V. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed SNUR rather than as of the effective date of the final rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the proposed significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the final rule.

Any person who began commercial manufacture, import, or processing of the chemical substance 2–Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117–12–4) for any of the significant new uses designated in the proposed SNUR modification after the date of publication of the proposed SNUR must stop that activity before the effective date of this final rule. Persons who ceased those activities will have to meet all SNUR notice requirements and wait until the end of the notification review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who began manufacture, import, or processing of the chemical substance between the date of publication of the proposed SNUR modification and the effective date of this modified SNUR meet the conditions of advance compliance as codified at § 721.45(h), those persons would be considered to have met the modified SNUR requirements for those activities.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. There are two exceptions:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In this case, EPA recommends persons, before performing any testing, to consult with the Agency pertaining to protocol selection.

The recommended testing specified in Unit II.A. of the proposed rule may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted without any test data may increase the likelihood that EPA will respond by taking action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substance compared to risks posed by potential substitutes.

VII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

VIII. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance during the development of the direct final rule. The Agency's complete Economic Analysis is available in the docket under docket ID number EPA–HQ–OPPT–2009–0669.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866

This action modifies a SNUR for a chemical substance that is the subject of a PMN and TSCA section 5(e) consent order. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 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 that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is discussed in this unit. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,400 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006–2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (see Unit VIII.) is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that modified SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this final rule. As such, EPA has determined that this final rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This final rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This final rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice

related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 29, 2011.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Amend § 721.5185 as follows:
■ a. Revise the section heading.
■ b. Revise paragraphs (a)(1) and (a)(2)(i).
■ c. Add paragraph (a)(2)(ii).
■ d. Revise paragraph (a)(2)(iii).
■ e. Remove paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).
■ f. Revise paragraph (b)(1).

The revisions and addition read as follows:

§ 721.5185 2-Propen-1-one, 1-(4-morpholinyl)-.

(a) * * *

(1) The chemical substance identified as 2-Propen-1-one, 1-(4-morpholinyl)- (PMN P–95–169; CAS No. 5117–12–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iv), (a)(3)(i), (a)(3)(ii), (a)(4), (a)(6)(v), (b) (concentration set at 1.0 percent), and (c). Safety 4/4H EVOH/PE laminate, Ansell Edmont Neoprene number 865, and Solvex Nitrile Rubber number 275 gloves have been tested in accordance with the American Society for Testing Materials (ASTM) F739 method and found by EPA to satisfy the consent orders and § 721.63(a)(2)(i) requirements for dermal protection to 100 percent PMN substance. Gloves and other dermal protection may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. For additional dermal protection materials, a company must submit all test data to the Agency and must receive written Agency approval for each type of material tested prior to use of that material as worker dermal protection. However, for the purposes of determining the imperviousness of gloves, up to 1 year after the commencement of commercial manufacture or import, the employer may use the method described in § 721.63(a)(3)(ii), thereafter, they must use the method described in § 721.63(a)(3)(i).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (a), (c), and (y)(1).

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (i) are applicable to manufacturers, importers, and processors of this chemical substance.

* * * * *

[FR Doc. 2011–11435 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–20; RM–11619, DA 11–750]

Television Broadcasting Services; Kalispell, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a Notice of Proposed Rulemaking issued in response to a petition for rulemaking filed by Montana State University ("MSU") requesting that channel *46 be transferred from the Pre-Transition DTV Table of Allotments, 47 CFR 73.622(b), to the Post-Transition Table of DTV Allotments, 47 CFR 73.622(i). MSU states that the grant of its rulemaking petition and application will serve the public interest by eliminating a substantial noncommercial educational white space area in northwest Montana and will further the Congressional mandate in Section 396(a)(9) of the Communications Act to ensure that all citizens have access to public telecommunications services.

DATES: This rule is effective June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 11–20, adopted April 26, 2011, and released April 28, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcipweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Montana, is amended by adding channel *46 at Kalispell.

[FR Doc. 2011–11843 Filed 5–12–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 100817363–1137–02]

RIN 0648–BA14

Taking and Importing of Marine Mammals; Military Training Activities Conducted Within the Gulf of Alaska Temporary Maritime Activities Area; Correction

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

ACTION: Final rule; correction.

SUMMARY: On May 4, 2011, a final rule was published in the **Federal Register** announcing that NMFS had issued regulations to govern the unintentional take of marine mammals incidental to Navy training activities conducted in the Gulf of Alaska Temporary Maritime Training Activities Area. That document inadvertently omitted the MK–39 Expendable Mobile ASW Training Target (EMATT) from Table 1. In addition, Table 5 inadvertently omitted a column displaying the total number of takes authorized over the course of the 5-year rule. This document corrects those oversights. All other information is unchanged.

DATES: Effective May 4, 2011, through May 4, 2016.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The final rule announcing that NMFS had issued regulations to govern the unintentional take of marine mammals incidental to Navy training activities conducted in the Gulf of Alaska Temporary Maritime Training Activities Area (76 FR 25480; May 4, 2011) contained an error in Table 1 that omitted a device NMFS intended to include and an error in Table 5 that omitted a column displaying the total takes authorized over 5 years. Accordingly, in FR Doc. No. 2011–10440 on pages 25482 and 25503, respectively, Tables 1 and 5 are revised to read as follows:

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Sonar Sources	Frequency (kHz)	Source Level (dB) re 1 µPa @ 1 m	Emission Spacing (m)*	Vertical Directivity	Horizontal Directivity	Associated Platform	System Description	Annual Amount	Unit
AN/SQS-53	3.5	235	154	Omni	240° forward-looking	Cruiser (CG) and Destroyer (DDG) hull mounted sonar	ASW search, detection, & localization (approximately 120 pings per hour)	578	Hours
AN/SQS-56	7.5	225	129	13°	30°	Frigate (FFG) hullmounted sonar	ASW search, detection, & localization (approximately 120 pings per hour)	52	Hours
AN/AQS-13/22	Classifed (MF)	Classified	15	Omni	Omni	Helicopter Dipping sonar	ASW search, detection, & localization (10 pings/dip, 30 seconds between pings), also used to represent AN/AQS-13	192	Hours
AN/BQQ-10	Classifed (MF)	Classified	Classified	Classified	Classified	Submarine hull-mounted sonar	ASW search and attack (approximately one ping per two hours when in use)	48	Hours
BQS-15 or BQQ-24	Classified (HF)	Classified	Classified	Classified	Classified	Submarine hull-mounted sonar	20 pings per hours for 4 hours	24	Hours
AN/SSQ-62 DICASS (sonobuoy, tonal)	8	201	450	Omni	Omni	Helicopter and maritime patrol aircraft (P3 and P8 MPA) dropped sonobuoy	Remotely commanded expendable sonar-equipped buoy (approximately 12 pings per use, 30 secs between pings, 8 buoys per hour)	266	Buoys
MK-48 torpedo sonar	Classified (>10)	Classified	144	Omni	Omni	Submarine (SSN) launched torpedo (used during SINKEX)	Recoverable and non-explosive exercise torpedo; sonar is active approximately 15 min per torpedo run	2	Torpedoes
AN/SSQ-110A (IEER)	Classified (impulsive, broadband)	Classified	n/a	Omni	Omni	MPA deployed	ASW system consists of explosive acoustic source buoy (contains two 5 lb charges) and expendable passive receiver sonobuoy	80	Buoys
AN/SSQ-125 (MAC)	1	Classified	15	Omni	Omni	MPA deployed	AN/SSQ-110A replacement. ASW system consists of active sonobuoy and expendable passive receiver sonobuoy. Phased introduction beginning in 2011.	Included in IEER above	Buoys
MK-84 Range Pingers	12.9 or 37 (rare)	194	Ping dur. 15 msec / ping every 2 sec	90°	Omni	Ships, submarines, weapons, targets, and UUV (8-10 knot platform)	4 pingers max used during a PUTR TRACKEX exercise. Surface ship pingers are at 7 m depth / target or sub pingers at 100 m depth. 8 hours total event duration each during PUTR operational days.	80	Hours
SUS MK-84	Selectable at 3.3 or 3.5	160	Continuous	Omni	Omni	Sonobuoy	Expendable buoy deployed from aircraft and ships used as a signaling device to communicate with submarines. Operating life of 70 seconds.	24	Buoys
PUTR Transponder	8.8 or 40	186 or 190	n/a		180 upward looking	Portable Undersea Tracking Range, deployed on ocean floor	2 pingers used 8 hrs per event. One ping every 2 seconds.	80	Hours
MK-39 EMATT	0.9	130	Continuous	Omni	Omni	Training target	900 Hz at 130 dB for four hours (continuous) at a speed of 5 kts and a depth of 100 m.	12	Targets

Table 1. Active sonar sources in the GOA and parameters used for modeling them. Many of the actual parameters and capabilities of these sonars are classified. Parameters used for modeling were derived to be as representative as possible. When, however, there were a wide range of potential modeling values, a nominal parameter likely to result in the most impact was used so that the model would err towards overestimation.

*Spacing means distance between pings at the nominal speed

CG – Guided Missile Cruiser; DDG – Guided Missile Destroyer; DICASS – Directional Command-Activated Sonobuoy System; FFG – Fast Frigate; HF – High-Frequency; MF – Mid-Frequency; MPA - Maritime Patrol Aircraft; UUV - Unmanned Underwater Vehicle.

Species	Modeled Sonar Exposures to Indicated Thresholds			Modeled Explosive Exposures to Indicated Thresholds				NMFS Annual Take Authorization			5-Year Take Authorization
	Level B Exposures		Level A Exposures (PTS)	Level B Exposures		Level A Exposures	Mortality				
	Risk Function (Behavioral)	TTS		Sub-TTS	TTS			Level B Harassment	Level A Harassment	Mortality	
ESA Species											
Blue whale	1	0	0	1	0	0	0	2	0	0	10
Fin whale	10,998	21	0	13	5	0	0	11,037	0	0	55,185
Humpback whale	1388	6	0	1	0	0	0	1395	0	0	6975
North Pacific right whale	1	0	0	1	0	0	0	2	0	0	10
Sei whale	4	0	0	4	0	0	0	8	0	0	40
Sperm whale	327	1	0	1	0	0	0	329	0	0	1645
Stellar sea lion	11,104	1	0	2	1	0	0	11,108	0	0	55,540
Mysticetes											
Gray whale	384	1	0	3	0	0	0	388	0	0	1940
Minke whale	677	2	0	2	0	0	0	681	0	0	3405
Odontocetes											
Baird's beaked whale	485	1	0	1	0	0	0	487	0	15 over the couse of 5-yr rule	2435
Stejneger's beaked whale	2302	6	0	3	1	0	0	2312	0		11,560
Cuvier's beaked whale	2302	6	0	3	1	0	0	2312	0		11,560
Dall's porpoise	205,485	768	1	84	37	2	1	206,374	0	0	1,031,870
Harbor porpoise	5438	0	0	2	0	0	0	5440	0	0	27,200
Killer whale	10,602	41	0	4	2	0	0	10,649	0	0	53,245
Pacific white-sided dolphin	16,912	61	0	12	6	1	0	16,991	0	0	84,955
Pinnipeds											
California sea lion	1	0	0	1	0	0	0	2	0	0	10
Harbor seal	1	0	0	1	0	0	0	2	0	0	10
Northern elephant seal	2064	0	0	4	1	0	0	2069	0	0	10345
Northern fur seal	154,144	16	0	26	16	1	0	154,202	0	0	771,010
Total	**424,620**	**931**	**1**	**169**	**70**	**4**	**1**	**425,790**	**0**		**2,128,965**

Table 5. Navy's estimated marine mammal exposures to the thresholds and NMFS take authorization.

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All other information contained in the document is unchanged.

Dated: May 9, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–11793 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 93
Friday, May 13, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Doc. No. AMS–FV–11–0016; FV11–955–1 PR]

Vidalia Onions Grown in Georgia; Change in Late Payment and Interest Requirements on Past Due Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on changes to the delinquent assessment requirements in effect under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Vidalia Onion Committee (Committee). This rule would establish a late payment charge of 10 percent on unpaid assessments that are 10 days past due and would increase the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. This action would improve handler compliance with the assessment and reporting provisions of the order and would help reduce the Committee's collection expenditures.

DATES: Comments must be received by May 31, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or E-mail: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the delinquent assessment requirements in effect under the order. This rule would establish a late payment charge of 10 percent on unpaid assessments that are 10 days past due and would increase the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. The change was recommended unanimously by the Committee at a meeting on February 17, 2011.

Section 955.42 of the order provides authority for imposition of a late charge or interest rate or both on delinquent assessments. Section 955.142 of the order's rules and regulations prescribes the requirements for delinquent assessments. Section 955.142 currently specifies that each handler pay an interest charge of 1 percent per month on any unpaid assessments and accrued unpaid interest beginning the day after the assessments are due. This rule would modify § 955.142 to include a 10 percent late charge on delinquent assessments that are 10 days past due and increase the interest rate on delinquent assessments to 1.5 percent per month.

The order requires handlers to pay to the Committee a pro rata assessment on the volume of onions handled. The volume of onions handled is based on a monthly shipping report handlers are required to submit to the Committee. The monthly shipping report and its associated assessments are due in the Committee office by the fifth day of the month following the month in which the shipments were made, unless the fifth day falls on a weekend or holiday, and then the due date is the first prior business day.

At the Committee's January 20, 2011, meeting, Committee staff indicated that some handlers have been late in reporting shipments and paying the associated assessments, and that this has been an ongoing problem for the last few seasons. The handlers eventually comply with the order requirements, but late payments deprive the Committee of expected operating income and increase Committee costs.

Vidalia onions are typically shipped from late April through August of each year. This creates a compressed window in which the Committee collects the funds it uses throughout the year for its operating expenses. In addition, the Committee spends the majority of funds allocated to promotion during the shipping season. With promotional expenses accounting for more than 50 percent of the Committee's total budget, timely payment of assessments is necessary for the Committee to have funds available to cover expenditures. When several handlers are late in paying assessments, the Committee can lack the operating funds required. If sufficient operating funds are not available, the Committee has to borrow money, increasing operating costs.

Further, there are costs associated with trying to collect the delinquent assessments. Some handlers require numerous contacts from Committee staff by mail and telephone, with others requiring on-site visits from the Committee's compliance officer. Throughout a season, these collection activities expend time and resources.

In addition to the costs associated with unpaid assessments, the failure of handlers to report on time is also a problem for the Committee. The monthly shipping report serves several functions, including providing volume information on which handler assessments are based. Without complete shipping information, the Committee is unable to provide timely and accurate market information to the industry. Also, monthly reports play an important role in terms of order compliance.

In an effort to address this problem, the Committee staff has provided additional information to handlers on when reports and assessments are due and on the importance of timely submission. They have also increased the number of reminder calls made to handlers when submissions are late, and visits have been made to delinquent handler facilities to collect late reports and payments. However, these efforts have not been successful in resolving this concern.

In its discussion of this issue, the Committee agreed the current interest rate applied to unpaid assessments does not provide sufficient incentive for handlers to turn in monthly reports and their associated assessments on time. As it stands, the rate is low enough that some handlers view the interest rate as a cost of doing business, and only submit reports and assessments after numerous contacts from the Committee staff.

Committee members wanted to find a solution that would encourage handlers to submit their reports and payments as required. Initially, at its January meeting, the Committee favored changing the way the interest rate was compounded and calculated as a way to address the problem. However, it was determined that such a change could exceed what USDA would consider reasonable and customary under marketing order programs. At its meeting in February, the Committee reviewed different scenarios imposed by other marketing orders to address this issue. Several other marketing orders utilize late payment charges to encourage compliance, and while that authority is available under the order for Vidalia onions, it had never been utilized. As such, the Committee decided to impose a late payment charge, as well as increasing the monthly interest rate.

Committee members agreed that establishing a 10 percent late charge on late assessments would help provide some additional incentive for handlers to submit their reports and assessments on time. The Committee also discussed what would be an appropriate grace period to set before the late penalty was applied. Recognizing the importance of the timely receipt of reports and payments, the Committee did not want to set an overly long grace period. The Committee agreed that 10 days would provide a sufficient buffer for those who may mistakenly miss a due date, while still supporting timely reports and payments.

As an added incentive to report and pay on time, the Committee also believed the monthly interest charge on delinquent assessments should also be increased. Consequently, the Committee unanimously recommended imposing a late payment charge of 10 percent on any assessments paid 10 days after the date the shipping report and assessments are due and increasing the interest rate applied to unpaid assessments by .5 percent to 1.5 percent per month.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 50 handlers of Vidalia onions subject to regulation under the order and around 80 producers in the designated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000 (13 CFR 121.201).

Based on National Agricultural Statistical Service and Committee data, the average annual grower price for fresh Vidalia onions during the 2010 season was around $20 per 40-pound container, and total Vidalia onion shipments were around 4,503,000 40-pound containers. Using available data, more than 90 percent of Vidalia onion handlers have annual receipts less than $7,000,000. However, the average receipts for Vidalia producers were around $1,118,970 in 2010, which is higher than the SBA threshold for small producers. Assuming a normal distribution, the majority of handlers of Vidalia onions may be classified as small entities, while the majority of producers may be classified as large entities, according to the SBA definition.

This action would establish a late payment charge of 10 percent on unpaid assessments that are 10 days past due and would increase the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. This change is expected to motivate handlers to submit shipping reports and assessments on time. This change would also help lower or offset the Committee's compliance expenditures associated with delinquent reports and assessments. The authority for this action is provided in § 955.42 of the order. This change would amend § 955.142. The Committee unanimously recommended this action at its February 17, 2011, meeting.

The proposed rule would not impose any additional costs on handlers that are complying with the requirements under the order. This action would only represent additional costs for handlers who are delinquent in submitting their reports and assessments. A 10 day grace period would also be provided before the late penalty would be applied, giving delinquent handlers additional time to avoid the costs associated with the late payment charge.

In addition, the recommended late charge and interest rate were considered reasonable by industry members who participated in the discussion of this issue. Since the proposed late payment charge and interest rate are percentages of amounts due, the costs, when applicable, are proportionate and would not place an extra burden on small entities as compared to large entities. In addition, the industry overall would benefit if handler reports and assessments were collected on time and the Committee's compliance costs were reduced regardless of entity size.

The Committee discussed alternatives to this change, including not making a change to the delinquent assessment requirements. However, a number of members commented that if some handlers were not paying on time, a change was necessary. The Committee also considered increasing the interest rate accrual to daily rather than monthly, but this option could result in an interest charge that was disproportionately large and was considered to be beyond the scope of what is reasonable and customary under marketing order programs. Thus, these alternatives were rejected.

The proposed action would not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS 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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible as the Committee's fiscal period began in January 2011 and handlers began shipping onions in April. Further, handlers are aware of the action, which was unanimously recommended by the Committee at a public meeting on February 17, 2011. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is proposed to be amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.142 is amended by designating the first paragraph as (a) and the second, (b), and revising newly designated paragraph (b) to read as follows:

§ 955.142 Delinquent assessments.

* * * * *

(b) Each handler shall pay interest of 1.5 percent per month on any assessments levied pursuant to § 955.42 and on any accrued unpaid interest beginning the day immediately after the date the monthly assessments were due, until the delinquent handler's assessments, plus applicable interest, have been paid in full. In addition to the interest charge, the Committee shall impose a late payment charge on any handler whose assessment payment has not been received within 10 days of the due date. The late payment charge shall be 10 percent of the late assessments.

Dated: May 9, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–11711 Filed 5–12–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–11–0013; FV11–989–1 PR]

Raisins Produced From Grapes Grown in California; Increase in Desirable Carryout Used To Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the desirable carryout used to compute the yearly trade demand for Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (committee). This rule would increase the amount of tonnage available early in the season when volume regulation is implemented, and is expected to help the industry meet its market needs.

DATES: Comments must be received by June 13, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Terry.Vawter@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250–0237; Telephone (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the desirable carryout used to compute the yearly trade demand for NS raisins regulated under the order. "Trade demand" is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. "Desirable carryout," one component of this formula, is the amount of tonnage carried in from the prior crop year which is considered necessary to meet market needs, before raisins from the new crop year are available.

Currently, the desirable carryout for NS raisins is defined as: the total shipments of free tonnage during August and September of each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule would increase the desirable carryout to 85,000 natural condition tons, with no further calculations required. This action was unanimously recommended by the committee at a meeting held on February 23, 2011.

It should be noted that the desirable carryout for raisin varieties other than NS are not impacted by this proposal.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the committee.

Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the committee could adopt other methods for arriving at a desirable carryout in the order's rules and regulations. The current formula has allowed the committee to periodically adjust the desirable carryout to better reflect changes in marketing conditions, as they have since 1989, most recently in 2000 and 2002.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). The formula has been changed over the years because the committee believed that an excessive supply of raisins was available early in a new crop year, which contributed to unstable market conditions.

However, given recent worldwide shortages of NS raisins, a favorable monetary exchange rate, and the extremely low inventory carried in by the industry at the beginning of the 2010–11 crop year, the committee determined that the current trade demand formula would not provide enough raisins to meet market demands when volume regulation is implemented, especially in the early part of the crop year when supplies can be tight. Thus, the committee recommended increasing the desirable carryout component of the formula. This change would also allow desirable carryout of NS raisins to more accurately reflect the amount of NS raisins that handlers actually hold in inventory at the end of a crop year, or about 100,000 tons.

The Committee's Recommendation

At a meeting on February 23, 2011, the committee reviewed the desirable carryout level. Most committee members believe that the supply of free tonnage raisins on the market has become tight, and the carryout balance has resulted in market shortages and missed marketing opportunities in the early part of the season. The following table illustrates handler inventories for NS raisins have generally been declining in recent years, with the exception of 2009–10.

CARRYOUT INVENTORY OVER PAST 6 YEARS

Crop year	NS carryout inventory (natural condition tons)
2010–11	83,143
2009–10	126,824
2008–09	106,249
2007–08	105,430
2006–07	111,444
2005–06	114,792

Committee staff estimated that this change to the desirable carryout level

would increase the 2011–12 trade demand for NS raisins by 15,000 tons. Increasing the trade demand will increase the free tonnage percentage, making more free tonnage available to handlers for immediate use. The effect of increased free tonnage would be to decrease any reserve pool which might be established.

NS raisins are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99, 2003–04, and 2010–11 crop years, volume regulation has been implemented for NS raisins every year since 1983.

Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 28 handlers of California raisins who are subject to regulation under the order and approximately 3,000 raisin producers in the regulated area. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based upon shipment data and other information provided by the committee, it may be concluded that a majority of producers and approximately 18 handlers of California raisins may be classified as small entities.

This rule would increase the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. "Trade demand" is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. "Desirable carryout," one component of this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. Currently, the desirable carryout for Natural (sun-dried) Seedless (NS) raisins is defined as: the total shipments of free tonnage during August and September of each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher.

This rule would increase the desirable carryout to 85,000 natural condition tons, with no calculations required. This action was unanimously recommended by the committee at a meeting held on February 23, 2011.

The desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, increasing the desirable carryout will increase the trade demand and free tonnage percentage, thus making more raisins available to handlers early in the season. This action is expected to provide more raisins at the beginning of each crop year to meet early demand, thereby improving market conditions at a time period when optimum shipments are advantageous—in time for the holidays. Holiday shipments begin in August, before new-crop raisins are available, and continue through October, and have traditionally been the highest shipment period, as buyers prepare for increased holiday sales of raisins and goods containing raisins.

The committee has an appointed subcommittee, the Administrative Issues Subcommittee (subcommittee), which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on February 1, 2011, and discussed desirable carryout, considering a number of alternative levels of desirable carryout. While there was no opposition to increasing the desirable carryout, some industry members supported making the NS desirable carryout 90,000 natural condition tons, while some suggested that 80,000 natural condition tons was a good alternative. Still others suggested that the ideal number might be closer to 100,000 natural condition tons, in keeping with the average of the last several years' actual inventory carried in at the beginning of the crop year, 106,000 natural condition tons. The 85,000 natural condition tons ultimately recommended was a compromise reached during subcommittee deliberations of the alternatives.

On February 23, 2011, the subcommittee met again and further discussed desirable carryout before recommending to the full committee that the desirable carryout be increased for NS raisins from the current formula or 60,000 natural condition tons, whichever is greater, to simply 85,000 natural condition tons. Ultimately, the full committee adopted the subcommittee's recommendation, and unanimously recommended the change to USDA.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS 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.

In addition, the subcommittee's meetings on February 1, 2011, and February 23, 2011; and the committee's meeting on February 23, 2011, were public meetings, widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and encouraged to participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: *http://www.ams.usda.gov/fv/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to comment on this rule. Thirty days is deemed appropriate because the committee must meet to compute trade demand on or before August 15, and desirable carryout is one component needed for the trade demand formula.

This rule invites comments on increasing the desirable carryout level specified under the order's regulations. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.154, the first sentence of paragraph (a) is revised to read as follows:

§ 989.154 Marketing policy computations.

(a) * * * The desirable carryout level to be used in computing and announcing a crop year's marketing policy for Natural (sun-dried) Seedless raisins shall be 85,000 natural condition tons. * * *

* * * * *

Dated: May 9, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–11715 Filed 5–12–11; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 52

[NRC–2011–0102]

RIN 3150–AI77

Draft Regulatory Guide, Guidance for ITAAC Closure

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment Draft Regulatory Guide (DG)–1250, "Guidance for ITAAC Closure Under 10 CFR Part 52." The DG–1250 describes a method that the staff of the NRC considers acceptable for use in satisfying the requirements for documenting the completion of inspections, tests, analyses, and acceptance criteria (ITAAC).

DATES: Submit comments on Draft Regulatory Guide, DG–1250 by July 25, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2011–0102 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0102. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* Electronic copies of DG–1250 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC Library at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML102530401. The regulatory analysis may be found in ADAMS under Accession No. ML102530440.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0102.

FOR FURTHER INFORMATION CONTACT: R.A. Jervey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–251–7404; *e-mail: Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The NRC is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide is temporarily identified by its task number, DG–1250, which should be mentioned in all related correspondence. The DG–1250 is proposed Revision 1 of Regulatory Guide 1.215, dated October 2010.

This guide describes a method that the staff of the NRC considers acceptable for use in satisfying the requirements for documenting the completion of ITAAC. Since the ITAAC process has yet to be used for a combined license review under Title 10 of the Code of Federal Regulations (10 CFR) Part 52, this revision includes refinements in the ITAAC process as the NRC develops experience with expected practices by licensees. Further changes may be recommended following additional experience with this process. In general, this revision provides clarifying information sufficient to endorse the methodologies described in the industry guidance document, Nuclear Energy Institute (NEI) 08–01,

"Industry Guideline for the ITAAC Closure Process under 10 CFR Part 52," Revision 4, issued July 2010, for the implementation of 10 CFR 52.99, "Inspection during Construction."

Dated at Rockville, Maryland, this 4th day of May 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–11678 Filed 5–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 52

[NRC–2010–0012]

RIN 3150–AI77

Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its regulations related to verification of nuclear power plant construction activities through inspections, tests, analyses, and acceptance criteria (ITAAC) under a combined license. Specifically, the NRC is proposing new provisions that apply after a licensee has completed an ITAAC and submitted an ITAAC closure notification. The new provisions would require licensees to report new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met, and to notify the NRC of completion of all ITAAC activities. In addition, the NRC is proposing editorial corrections to existing language in the NRC's regulations to correct and clarify ambiguous language and make it consistent with language in the Atomic Energy Act of 1954, as amended (AEA).

DATES: Submit comments on this proposed rule by July 27, 2011. Submit comments on the information collection aspects on this proposed rule by June 13, 2011. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: Please include Docket ID NRC–2010–0012 in the subject line of your comments. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0012. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (*telephone:* 301–415–1677).
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement, Section XI.

See Section VI, Availability of Documents, for instructions on how to access NRC's Agencywide Documents Access and Management System (ADAMS) and other methods for obtaining publicly available documents related to this action.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Libby, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; *telephone:* at 301–415–0522; *e-mail: Earl.Libby@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

II. Background

The Commission first issued Title 10 of the Code of Federal Regulations (10 CFR) part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," on April 18, 1989 (54 FR 15371). Section 52.99, "Inspection during construction," was included to make it clear that the NRC's inspection carried out during construction under a combined license would be based on ITAAC proposed by the applicant, approved by the NRC staff, and incorporated in the combined license. At that time, the Commission made it clear that, although 10 CFR 52.99 envisioned a "sign-as-you-go" process in which the NRC staff would sign off on inspection units and notice of the staff's sign-off would be published in the **Federal Register**, the Commission itself would make no findings with respect to construction until construction was complete. See 54 FR 15371; April 18, 1989; at 15383 (second column).

On August 28, 2007 (72 FR 49351), the Commission revised 10 CFR part 52 to enhance the NRC's regulatory effectiveness and efficiency in implementing its licensing and approval processes. In that revision, the NRC amended 10 CFR 52.99 to require licensees to notify the NRC that the prescribed inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met. The revision also requires that these notifications contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met. The NRC added this requirement to ensure that combined license applicants and holders were aware that it was the licensee's burden to demonstrate compliance with the ITAAC and the NRC expected the notification of ITAAC completion to contain more information than just a simple statement that the licensee

believes the ITAAC had been completed and the acceptance criteria met.

Under Section 185.b of the AEA and 10 CFR 52.97(b), a combined license for a nuclear power plant (a "facility") must contain those ITAAC that are "necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with" the license, the AEA, and NRC regulations. Following issuance of the combined license, Section 185.b of the AEA and 10 CFR 52.99(e) require that the Commission "ensure that the prescribed inspections, tests, and analyses are performed." Finally, before operation of the facility, Section 185.b of the AEA and 10 CFR 52.103(g) require that the Commission find that the "prescribed acceptance criteria *are met*" (emphasis added). This Commission finding will not occur until construction is complete, near the date for scheduled initial fuel load.

As currently required by 10 CFR 52.99(c)(1), the licensee must submit ITAAC closure notifications containing "sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the associated acceptance criteria have been met." These notifications perform two functions. First, they alert the NRC to the licensee's completion of the ITAAC [1] and ensure that the NRC has sufficient information to complete all of the activities necessary for the Commission to determine whether all of the ITAAC acceptance criteria have been or will be met (the "will be met" finding is relevant to any hearing on ITAAC under 10 CFR 52.103) before initial operation. Second, they ensure that interested persons will have access to information on both completed and uncompleted ITAAC at a level of detail sufficient to address Section 189.a(1)(B) of the AEA threshold for requesting a hearing on acceptance criteria. See 72 FR 49352; August 28, 2007, at 49450 (second column).

After completing the 2007 rulemaking, the NRC began developing guidance on the ITAAC closure process and the requirements under 10 CFR 52.99. In October 2009, the NRC issued regulatory guidance for the implementation of the revised 10 CFR 52.99 in Regulatory Guide (RG) 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52." This RG endorsed guidance developed by the Nuclear Energy Institute (NEI) in NEI 08–01, "Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52," Revision 3, issued January 2009 (ADAMS Accession No. ML090270415).

After considering information presented by industry representatives in a series of public meetings, the NRC realized that some additional implementation issues were left unaddressed by the various provisions in 10 CFR part 52. In particular, the NRC determined that the combined license holder should provide additional notifications to the NRC following the notification of ITAAC completion currently required by 10 CFR 52.99(c)(1). The NRC refers to the time after this ITAAC closure notification, but before the date the Commission makes the finding under 10 CFR 52.103(g), as the ITAAC maintenance period. Most recently, the NRC held two public meetings in March 2010 to discuss draft proposed rule text that it made available to the public in February 2010. The NRC considered feedback given from external stakeholders during those meetings in its development of this proposed rule. Finally, in March 2010, the NRC issued Inspection Procedure 40600, "Licensee Program for ITAAC Management," that provides guidance to verify licensees have implemented ITAAC maintenance programs to ensure that structures, systems, and components continue to meet the ITAAC acceptance criteria until the Commission makes the finding under 10 CFR 52.103(g) allowing operation.

III. Discussion

In brief, the NRC is proposing the following new notifications subsequent to ITAAC closure:

- ITAAC post-closure notification
- All ITAAC complete notification

In general, the reasons for these proposed new notifications are analogous to the reasons presented in the 2007 rulemaking for the existing 10 CFR 52.99(c) notifications (i.e., to ensure that the NRC has sufficient information, in light of new information developed or identified after the ITAAC closure notification under 10 CFR 52.99(c)(1), to complete all of the activities necessary for the Commission to make a determination on ITAAC, and to ensure that interested persons have access to information on ITAAC at a level of detail sufficient to address the AEA Section 189.a(1)(B) threshold for requesting a hearing). After evaluating the various means of ensuring that the Commission has sufficient information to make a determination on ITAAC, and that interested persons have access to sufficient ITAAC information, the NRC is proposing a performance-based rule augmented by guidance. The details of timing and content of the proposed new notifications are captured in draft guidance being issued for public comment simultaneously with this proposed rule, as discussed in more detail in Section V, "Guidance," of this document. The NRC believes that this approach will allow more flexibility to adjust the guidance based on lessons learned during early implementation of the ITAAC process under the first combined licenses. Based upon the NRC's experience with the overall NRC oversight and verification of ITAAC, the notification provisions of the rule, the ITAAC hearing process, and the process for making the 10 CFR 52.103(g) finding, the NRC may revise and supplement the final guidance on the timing and content of notifications.

The NRC notes that it would not be solely relying on the existence of this proposed rulemaking, if approved as a final rule, as a primary basis for the 10 CFR 52.103(g) finding. Rather, the NRC would use a holistic review using results from the NRC's construction inspection program and ITAAC closure review process as primary factors supporting a conclusion that the acceptance criteria in the combined license are met.

Each of the proposed notification requirements in this rulemaking, and the basis for each of the proposed requirements, are described in Section III.B, "Additional ITAAC Notifications," of this document. The NRC is also proposing several editorial changes to 10 CFR 52.99 in paragraphs (b), (c)(1), proposed (c)(3) (current (c)(2)), and (d)(1). In all of these cases, the NRC is proposing to replace the phrase "acceptance criteria have been met" with the phrase "acceptance criteria are met" for consistency with the wording of the requirement in 10 CFR 52.103(g) on the Commission's ITAAC finding, which is derived directly from wording in the AEA. In addition, the NRC is proposing an editorial change to 10 CFR 52.99(d)(2) to replace the phrase "ITAAC has been met" with the phrase "prescribed acceptance criteria are met" for consistency with the wording in 10 CFR 52.99(d)(1).

A. Licensee Programs That Maintain ITAAC Conclusions

One essential element in ensuring the maintenance of successfully completed ITAAC involves the use of established licensee programs such as the Quality Assurance Program, Problem Identification and Resolution Program, Maintenance/Construction Program, and Design and Configuration Management Program. Each program credited with

[1] In this discussion, the phrases "completion of ITAAC" and "ITAAC completion" mean that the licensee has determined that: (1) The prescribed inspections, tests, and analyses were performed, and (2) the prescribed acceptance criteria are met.

supporting the maintenance of completed ITAAC should contain attributes that maintain the validity of the ITAAC determination basis. These program attributes include the following:

- Licensee screening of activities and events for impact on ITAAC;
- Licensee determination of whether supplemental ITAAC notification is required; and
- Licensee supplement of the ITAAC closure package as appropriate to demonstrate that the acceptance criteria continue to be met.

The NRC expects these programs to be fully implemented and effective before the licensee takes credit for them as an appropriate means of supporting ITAAC maintenance. These programs will be subject to NRC inspection.

B. Additional ITAAC Notifications

The NRC's confidence in the licensee's ability to maintain the validity of completed ITAAC conclusions relies on timely communication. Currently, 10 CFR 52.99 specifies two ITAAC notification requirements for licensees. These notifications are the ITAAC closure notifications required by 10 CFR 52.99(c)(1) and the notification of uncompleted ITAAC required by 10 CFR 52.99(c)(2) (proposed 10 CFR 52.99(c)(3)) no less than 225 days before scheduled fuel load. The NRC believes that additional formal notifications to the NRC are needed that are not currently required by regulation.

ITAAC Post-Closure Notification

The first new notification is contained in proposed 10 CFR 52.99(c)(2), "ITAAC post-closure notifications," and would be required following the licensee's ITAAC closure notifications under 10 CFR 52.99(c)(1) until the Commission makes the finding under 10 CFR 52.103(g). This provision would require the licensee to notify the NRC, in a timely manner, of new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met (referred to as the *ITAAC determination basis*).

The licensee is responsible for maintaining the validity of the ITAAC conclusions after completion of the ITAAC. If the ITAAC determination basis is materially altered, the licensee is expected to notify the NRC. Through public workshops and stakeholder interaction, the NRC has developed thresholds to identify when activities would materially alter the basis for determining that a prescribed inspection, test, or analysis was performed as required, or finding that a prescribed acceptance criterion is met. One obvious case is that a notification under proposed paragraph (c)(2) would be required to correct a material error or omission in the original ITAAC closure notification.

Section 52.6, "Completeness and accuracy of information," paragraph (a), requires that information provided to the Commission by a licensee be complete and accurate in all material respects. However, it might be the case that the original closure notification was complete and accurate when sent, but subsequent events materially alter the ITAAC determination bases. Also, a material error or omission might not be discovered until after the ITAAC closure notification is sent. It is possible that new information materially altering the ITAAC determination bases would not rise to the reporting threshold under 10 CFR 52.6(b). As required by 10 CFR 52.6(b), licensees must notify the Commission of information identified by the licensee as having, for the regulated activity, a significant implication for public health and safety or the common defense and security. Given the primary purpose of ITAAC, to verify that the plant has been constructed and will be operated in compliance with the approved design, the NRC believes that it cannot rely on the provisions in 10 CFR 52.6 for licensee reporting of new information materially altering the ITAAC determination bases. The reasons for this conclusion are as follows:

1. Material errors and omissions in ITAAC closure notifications, relevant to the accuracy and completeness of the documented bases for the Commission's finding on ITAAC, may nonetheless be determined in isolation by a licensee as not having a significant implication for public health and safety or common defense and security.

2. A Commission finding of compliance with acceptance criteria in the ITAAC is required, under Section 185.b of the AEA, in order for the combined license holder to commence operation.

3. The addition of specific reporting requirements addressing information relevant and material to the ITAAC finding ensures that the NRC will get the necessary reports as a matter of regulatory requirement, and allows the NRC to determine the timing and content of these reports so that they serve the regulatory needs of the NRC.

Therefore, the NRC intends that these issues will be reported under proposed 10 CFR 52.99(c)(2). In addition to the reporting of material errors and omissions, the NRC has identified other circumstances in which reporting under this provision would be required (i.e., reporting thresholds). These reporting thresholds are described in more detail in the Section IV, "Section-By-Section Analysis," of this document.

When making the 10 CFR 52.103(g) finding, the NRC must have information sufficient to determine that the relevant acceptance criteria are met despite the new information prompting the notification under proposed paragraph (c)(2). The licensee's summary statement of the basis for resolving the issue which is the subject of the notification, a discussion of any action taken, and a list of the key licensee documents supporting the resolution and its implementation, would assist the NRC in making its independent evaluation of the issue. Apart from the NRC's use of the information, the NRC also believes that public availability of such information is necessary to ensure that interested persons will have sufficient information to review when preparing a request for a hearing under 10 CFR 52.103, comparable to the information provided under paragraph (c)(1), as described in the Statements of Consideration for the 2007 rulemaking. See August 28, 2007; 72 FR 49352, at 49384 (second and third column). Accordingly, the NRC proposes that after a licensee identifies new information materially altering the ITAAC determination basis, it must then submit what is essentially a "resolution" notification to the NRC in the form of an ITAAC post-closure notification. The ITAAC post-closure notification, described in proposed paragraph (c)(2), would require the licensee to submit a written notification of the resolution of the circumstances surrounding the identification of new information materially altering the ITAAC determination basis. The ITAAC post-closure notification must contain sufficient information demonstrating that, notwithstanding the information that prompted notification, the prescribed inspections, tests, and analyses have been performed as required and the prescribed acceptance criteria are met. The ITAAC post-closure notifications should explain the need for the notification, outline the resolution of the issue, and confirm that the ITAAC acceptance criteria continue to be met. The ITAAC post-closure notifications must include a level of detail similar to the level of information required in initial ITAAC closure notifications under 10 CFR 52.99(c)(1).

Proposed 10 CFR 52.99(c)(2) states that licensees must make the notification "in a timely manner."

Further discussion of what the NRC considers "timely" can be found in the NRC guidance being issued simultaneously with this rule, as discussed in more detail in Section V of this document.

The NRC proposes that the notification be available for public review under proposed paragraph (e)(2). This would ensure public availability and accessibility of all NRC information on ITAAC closure. Further explanation of the basis for the availability requirement is presented under the discussion on proposed 10 CFR 52.99(e)(2).

Events that affect completed ITAAC could involve activities that include, but are not limited to, maintenance and engineering, program, or design changes. The NRC expects that licensees will carry out these activities under established programs to maintain ITAAC conclusions and that no post-closure notification will be necessary in most instances. The NRC can have confidence that prior ITAAC conclusions are maintained as long as the ITAAC determination basis established by the original ITAAC closure notification is not materially altered. If the ITAAC determination basis is not materially altered, licensee activities will remain below the notification threshold of proposed 10 CFR 52.99(c)(2). If the ITAAC determination basis is materially altered, the licensee would be required to notify the NRC under proposed 10 CFR 52.99(c)(2).

Although the NRC is proposing that licensees be required to notify the NRC of information materially altering the ITAAC determination basis only after the licensee has evaluated and resolved the issue prompting the notification, the NRC encourages licensees to communicate with the NRC early in its evaluation process. The purpose of this early communication would be to alert the NRC inspection staff to the fact that additional activities may be scheduled that affect a structure, system, or component (including physical security hardware) or program element for which one or more ITAAC have been closed. This will allow the NRC inspection staff to discuss the licensee's plans for resolving the issue to determine if the staff wants to observe any of the upcoming activities for the purpose of making a future staff determination about whether the acceptance criteria for those ITAAC continue to be met.

All ITAAC Complete Notification

Another notification that the NRC is proposing is the all ITAAC complete notification under 10 CFR 52.99(c)(4). The purpose of this notification is to facilitate the required Commission finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met. After or concurrent with the last ITAAC closure notification required by 10 CFR 52.99(c)(1), the licensee would be required to notify the NRC that all ITAAC are complete. When the licensee submits the all ITAAC complete notification, the NRC would expect that all activities requiring ITAAC post-closure notifications have been completed and that the associated ITAAC determination bases have been updated.

To support the Commission's finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met, if and when appropriate, the NRC staff will send a recommendation to the Commission. The staff will consider that all ITAAC "are met" if both of the following conditions hold:

- All ITAAC were verified to be met at one time; and
- The licensee provides confidence that the ITAAC determination bases have been maintained and that the ITAAC acceptance criteria continue to be met.

The staff approach would allow licensees to have ITAAC-related structures, systems, or components, or security or emergency preparedness related hardware, undergoing certain activities at the time of the 10 CFR 52.103(g) finding, if the programs credited with maintaining the validity of completed ITAAC guide those activities, and the activities are not so significant as to exceed a threshold for reporting. If a reporting threshold has been exceeded, the NRC would need to evaluate the licensee's ITAAC post-closure notification to determine whether the ITAAC continue to be met. Reporting thresholds are discussed in more detail in the Section-by-Section Analysis section of this document.

ITAAC Closure Documentation

The proposed rule does not contain specific ITAAC documentation and record retention requirements. The NRC understands that the nuclear power industry believes that holders of combined licenses are already required, under regulatory provisions such as 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to prepare and retain records supporting the vast majority of ITAAC processes, including the activities supporting the notifications that would be required by the proposed rule. Accordingly, the NRC has not included specific documentation and record retention requirements in this proposed rule. If the NRC inspections disclose substantial issues with licensees' records on ITAAC maintenance, the NRC will revisit the need for documentation and record retention requirements on ITAAC maintenance.

NRC Inspection, Publication of Notices, and Availability of Licensee Notifications

Section 52.99(e)(1) requires that the NRC publish in the **Federal Register** the NRC staff's determination of the successful completion of inspections, tests, and analyses, at appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a). Section 52.99(e)(2) currently provides that the NRC shall make publicly available the licensee notifications under current paragraphs (c)(1) and (c)(2). The NRC is proposing to revise paragraph (e)(2) to cover all notifications under 10 CFR 52.99(c). In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete. Furthermore, by the date of the *Federal Register* notice of intended operation and opportunity to request a hearing on whether acceptance criteria are met (under 10 CFR 52.103(a)), the NRC will make available the licensee notifications under paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) that it has received to date.

C. Conforming Changes to 10 CFR 2.340

The 2007 part 52 rulemaking amended 10 CFR 2.340, "Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses," to clarify, among other things, the scope of the presiding officer's decision in various kinds of NRC proceedings, and remove the requirement for direct Commission involvement in all production and utilization facility licensing proceedings.

Section 2.340(j) was intended to address these matters in connection with the Commission finding on acceptance criteria and any associated hearing under 10 CFR 52.103. In the course of developing this proposed rule, the NRC determined that 10 CFR 2.340(j) contains several errors and ambiguous statements. The proposed changes, together with the proposed bases for the changes, are described below.

Section 2.340(j) currently states that the Commission makes a finding under 10 CFR 52.103(g) that acceptance criteria "have been or will be met." This is incorrect; the Commission's finding under 10 CFR 52.103(g) is that the acceptance criteria "are met," which is the statutory requirement under Section 185.b of the AEA. To correct this error, the NRC proposes to amend the introductory language of 10 CFR 2.340(j) to use the correct phrase, "acceptance criteria * * * are met * * *."

In addition, 10 CFR 2.340(j), as currently written, does not clearly address the circumstances in a contested proceeding that could lead to a Commission finding under 10 CFR 52.103(g) that acceptance criteria are met. To provide clarity, the NRC proposes to further amend 10 CFR 2.340(j) to clearly explain when the Commission may make the 10 CFR 52.103(g) finding, by further delineating between the presiding officer's decisions on contentions that acceptance criteria have not been met and decisions on contentions that acceptance criteria will not be met. In both cases, if the presiding officer's decision resolves the contention favorably this does not obviate the need for the Commission to make the required finding under Section 185.b of the AEA and 10 CFR 52.103(g) that the acceptance criteria are met. For example, the presiding officer's initial decision upon summary disposition that a particular acceptance criterion has been met may be rendered before the occurrence of an event which is ultimately resolved as reported in a 10 CFR 52.99(c)(2) notification. In such a circumstance, the Commission must independently come to the conclusion that the acceptance criterion is met. That conclusion must be based upon consideration of both the presiding officer's initial decision and information relevant to the 10 CFR 52.99(c)(2) notification. Accordingly, the NRC concludes that it is necessary to clarify the language of paragraph (j). To accommodate the proposed clarifications, the Commission proposes to redesignate current paragraph (j)(2) as paragraph (j)(4), but without any change to the regulatory language.

IV. Section-by-Section Analysis

The primary changes on ITAAC maintenance being proposed by the NRC in this rulemaking are to 10 CFR 52.99. The changes to 10 CFR 2.340 are corrections.

Section 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits and licenses

Section 2.340(j) Issuance of Finding on Acceptance Criteria Under 10 CFR 52.103

Paragraph (j) would be amended to allow the Commission (or the appropriate staff Office Director) in a contested proceeding to make the finding under 10 CFR 52.103(g) that the acceptance criteria in a combined license are met, under certain circumstances that are delineated in greater detail in paragraphs (j)(1) through (4). This compares with the current rule, which contains only two paragraphs (j)(1) and (2). The matters covered by paragraph (j)(1) of the current rule would be described with greater clarity in proposed paragraphs (j)(1) through (3).

Proposed paragraph (j)(1) clarifies that the Commission may not make the overall 10 CFR 52.103(g) finding unless it is otherwise able to find that all uncontested acceptance criteria (i.e., "acceptance criteria not within the scope of the initial decision of the presiding officer") are met. The phrase "otherwise able to make" conveys the NRC's determination that the Commission's process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer's initial decision.

Proposed paragraph (j)(2) clarifies that a presiding officer's initial decision which finds that acceptance criteria have been met, is a necessary but not sufficient prerequisite for the Commission to make a finding that the contested acceptance criteria (i.e., the criteria which are the subject of the presiding officer's initial decision) are met. The Commission must thereafter, even if the presiding officer's initial decision finds that the contested acceptance criteria have been met, be able to make a finding that the contested criteria are met after considering: (1) Information submitted in the licensee notifications which the NRC proposes to be included in 10 CFR 52.99; and (2) the NRC staff's findings with respect to these notifications, to issue the overall 10 CFR 52.103 finding. By using the word "thereafter," the NRC intends to emphasize that the Commission would not make a finding that contested acceptance criteria are met in advance of the presiding officer's initial decision on those acceptance criteria.

Proposed paragraph (j)(3) expresses the same concept as paragraph (j)(2) but as applied to findings that acceptance criteria will be met. Thus, even if a presiding officer's initial decision finds that the contested acceptance criteria will be met, the Commission must thereafter be able to make a finding that the contested criteria are met after considering: (1) Information submitted in an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1); (2) information submitted in the licensee notifications which the NRC proposes to be included in 10 CFR 52.99; and (3) the NRC staff's findings with respect to such notifications, to issue the overall 10 CFR 52.103 finding.

Proposed paragraph (j)(4) is the same as the existing provision in 10 CFR 2.340(j)(2). This paragraph provides that the Commission may make the 52.103(g) finding notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, a motion for a stay under 10 CFR 2.342, or a petition under 10 CFR 2.206.

The NRC notes that 10 CFR 2.340(j) is not intended to be an exhaustive "roadmap" to a possible 10 CFR 52.103(g) finding that acceptance criteria are met. For example, this provision does not directly address what must occur for the Commission to make a 10 CFR 52.103(g) finding where the presiding officer finds, with respect to a contention, that acceptance criteria are not met. The NRC also notes that this provision applies only to contested proceedings. If there is no hearing under 10 CFR 52.103, or if the hearing ends without a presiding officer's initial decision on the merits (e.g., a withdrawal of the sole party in a proceeding), then 10 CFR 2.340(j) does not govern the process by which the Commission (or the appropriate staff Office Director) makes the 10 CFR 52.103(g) finding.

Section 52.99 Inspection During Construction; ITAAC Schedules and Notifications; NRC Notices

Although the NRC is not making changes to every paragraph under 10 CFR 52.99, for simplicity, this rulemaking would replace the section in its entirety. Therefore, the NRC is providing a section-by-section discussion for every paragraph in 10 CFR 52.99. For those paragraphs where little or no change is being proposed, the NRC is repeating the section-by-section discussion from the 2007 major revision to 10 CFR part 52 with editorial and conforming changes, as appropriate.

The purpose of this section is to present the requirements to support the NRC's inspections during construction, including requirements for ITAAC

schedules and notifications and for NRC notices of ITAAC closure.

Section 52.99(a) Licensee Schedule for Completing Inspections, Tests, or Analyses

The NRC is not proposing any changes to this paragraph. Paragraph (a) requires that the licensee submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined at 10 CFR 50.10, whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. This provision also requires the licensee to submit updates to the ITAAC schedule every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, licensees must submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under 10 CFR 52.99(c). The information provided by the licensee will be used by the NRC in developing the NRC's inspection activities and activities necessary to support the Commission's finding whether all of the ITAAC are met prior to the licensee's scheduled date for fuel load. Even in the case where there were no changes to a licensee's ITAAC schedule during an update cycle, the NRC expects the licensee to notify the NRC that there have been no changes to the schedule.

Section 52.99(b) Licensee and Applicant Conduct of Activities Subject to ITAAC

The NRC is proposing an editorial change to the last sentence of 10 CFR 52.99(b) to replace the words "have been met" with "are met" for consistency with the requirements of Section 185.b of the AEA, as implemented in 10 CFR 52.103(g). The purpose of the requirement in 10 CFR 52.99(b) is to clarify that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC are met.

Section 52.99(c) Licensee Notifications

Section 52.99(c)(1) ITAAC Closure Notification and Section 52.99(c)(3) Uncompleted ITAAC Notification

The NRC is proposing editorial changes in 10 CFR 52.99(c)(1) to replace the words "have been met" with "are met." Section 52.99(c)(1) would require the licensee to notify the NRC that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met. Section 52.99(c)(1) would further require that the notification contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met.

The NRC is proposing to renumber current 10 CFR 52.99(c)(2) as proposed 10 CFR 52.99(c)(3). In addition, the NRC is proposing an editorial change to the last sentence in proposed 10 CFR 52.99(c)(3) (current 10 CFR 52.99(c)(2)) to replace the words "have been met" with "are met." Proposed paragraph 52.99(c)(3) would require that, if the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation (consistent with the AEA Section 185.b requirement that the Commission, "prior to operation," find that the acceptance criteria in the combined license are met). The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met.

Section 52.99(c) ensures that: (1) The NRC has sufficient information to complete all of the activities necessary for the Commission to make a finding as to whether all of the ITAAC are met prior to initial operation; and (2) interested persons will have access to information on both completed and uncompleted ITAAC at a level of detail sufficient to address the AEA Section 189.a(1)(B) threshold for requesting a hearing on acceptance criteria. It is the licensee's burden to demonstrate compliance with the ITAAC, and the NRC expects the information submitted under paragraph (c)(1) to contain more than just a simple statement that the licensee believes the ITAAC have been completed and the acceptance criteria met. The NRC would expect the notification to be sufficiently complete and detailed for a reasonable person to understand the bases for the licensee's representation that the inspections, tests, and analyses have been successfully completed and the acceptance criteria are met. The term "sufficient information" would require, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses have been performed and that the prescribed acceptance criteria are met.

Furthermore, with respect to uncompleted ITAAC, it is the licensee's burden to demonstrate that it will comply with the ITAAC and the NRC would expect the information that the licensee submits under proposed paragraph (c)(3) to be sufficiently detailed such that the NRC staff can determine what activities it will need to undertake to determine if the acceptance criteria for each of the uncompleted ITAAC are met, once the licensee notifies the NRC that those ITAAC have been successfully completed and their acceptance criteria met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses will be performed and that the prescribed acceptance criteria will be met. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods to be used for performing the inspections, tests, and analyses and determining that the acceptance criteria are met.

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date, the NRC staff will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission itself will require some period of time to perform its review of the staff's conclusions regarding all of the ITAAC and the staff's recommendations regarding the Commission finding under 10 CFR 52.103(g).

Section 52.99(c)(2) ITAAC Post-Closure Notifications

The NRC is proposing to add new paragraph (c)(2) that would require the licensee to notify the NRC, in a timely manner, of new information that materially alters the bases for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met.

Fundamentally, those circumstances requiring notification under proposed

paragraph (c)(2) fall into the following two categories:

• The information presented or referenced in the original 10 CFR 52.99(c)(1) notification is insufficient, either because it omits material information, or because the information is materially erroneous or incorrect, and the licensee discovers or determines there is a material omission or error after filing the original 10 CFR 52.99(c)(1) notification.

• The information presented or referenced in the original 10 CFR 52.99(c)(1) notification was complete (i.e., not omitting material information) and accurate (i.e., not materially erroneous), but there is new material information with respect to the subject of the original 10 CFR 52.99(c)(1) notification.

The term "materially altering" refers to situations in which there is information not contained in the 10 CFR 52.99(c)(1) notification that "has a natural tendency or capability to influence an agency decision maker" in either determining whether the prescribed inspection, test, or analysis was performed as required, or finding that the prescribed acceptance criterion is met. See Final Rule; Completeness and Accuracy of Information, December 31, 1987; 52 FR 49362, at 49363. Applying this concept in the context of 10 CFR 52.99(c), information for which notification would be required under paragraph (c)(2) is that information which, considered by itself or when considered in connection with information previously submitted or referenced by the licensee in a paragraph (c)(1) notification, relates to information which is necessary for any of the following:

• The licensee to assert that the prescribed inspections, tests, and analyses have been performed and the acceptance criteria are met;

• The NRC staff to determine if (and provide a recommendation to the Commission as to whether) the prescribed inspections, tests, and analyses were performed and the acceptance criteria are met; or

• The Commission to find that the acceptance criteria are met, as required by Section 185.b of the AEA and 10 CFR 52.103(g).

The term "new" information embraces three different kinds of information:

• New information (i.e., a "discovery" or new determination identified after the 10 CFR 52.99(c)(1) notification) about the accuracy of material information provided in, referenced by, or necessary to support representations made in that notification.

• New information (i.e., a "discovery" or new determination identified after the 10 CFR 52.99(c)(1) notification) that previously existing information should have been, but was not provided in the notification or referenced in the supporting documentation (i.e., an omission of material information).

• Information on a "new" event or circumstance (i.e., an event or circumstance occurring after the 10 CFR 52.99(c)(1) notification) that materially affects the accuracy or completeness of the basis, as reported or relied upon in the 52.99(c)(1) notification, for the licensee's representation that the acceptance criteria are met.

Applying these concepts, the NRC believes that the circumstances for which reporting under this provision would be required include:

• *Material Error or Omission*—Is there a material error or omission in the original ITAAC closure notification?

• *Post Work Verification (PWV)*—Will the PWV performed following work undertaken to resolve an issue reportable under 10 CFR 52.99(c)(2) use a significantly different approach than the original performance of the inspection, test, or analysis as described in the original ITAAC notification?

• *Engineering Changes*—Will an engineering change be made that materially alters the determination that the acceptance criteria are met?

• *Additional Items To Be Verified*—Will there be additional items that need to be verified through the ITAAC?

• *Complete and Valid ITAAC Representation*—Will any other licensee activities materially alter the ITAAC determination basis?

Additional guidance on implementing these reporting thresholds is being proposed in a draft revision to RG 1.215, being issued for public comment simultaneously with this proposed rule. This proposed guidance is discussed further in Section V, "Guidance," of this document.

Proposed paragraph (c)(2) would require the licensee to submit an ITAAC post-closure notification documenting the resolution of the circumstances surrounding the identification of new material information. By "resolution," the NRC means: (1) The completion of the licensee's technical evaluation of the issue and the determination as to whether the prescribed inspection, test, or analysis was performed as required; (2) licensee completion of any necessary corrective or supplemental actions; (3) licensee documentation of the issue and any necessary corrective or supplemental actions in order to bring the ITAAC determination basis up to date; and (4) ultimate licensee determination about whether the affected acceptance criteria continue to be met.

The information provided in the notification should be at a level of detail comparable to the ITAAC closure notification under paragraph (c)(1). The dual purposes of the proposed paragraph (c)(2) notification, as described in Section III.B, "Additional ITAAC Notifications," of this document, are comparable to the purposes of the ITAAC closure notification in paragraph (c)(1). Thus, the NRC believes that the considerations for the content of the ITAAC closure notification, as discussed in the final 2007 rulemaking, apply to the proposed paragraph (c)(2) notifications. See 72 FR 49450; August 28, 2007 (second column). Thus, it is the licensee's burden to demonstrate compliance with the ITAAC, taking into account any new information that materially alters the determination that a prescribed inspection, test, or analysis was performed as required or that a prescribed acceptance criterion is met. The NRC expects the paragraph (c)(2) notification to contain more than just a simple statement that the licensee has concluded, despite the material new information, that the prescribed inspection, test, or analysis was performed as required and that a prescribed acceptance criterion is met. The NRC expects the notification to be sufficiently complete and detailed for a reasonable person to understand the bases for the licensee's determination in the paragraph (c)(2) notification. The term "sufficient information" is comparable to the meaning given to that term in paragraph (c)(1), and requires, at a minimum, a summary description of the bases for the licensee's determination. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods used or relied upon to develop or support the licensee's determination. The paragraph (c)(2) notification must be in writing, and the records on which it is based must be retained by the licensee to support possible NRC inspection. Licensees should use the same process for submitting ITAAC post-closure notifications as would be used to submit initial ITAAC closure notifications. The NRC is issuing draft guidance on implementation of the requirements in proposed paragraph (c)(2), including the level of detail necessary to comply with the requirements of proposed paragraph (c)(2), as discussed in Section V of this document.

Section 52.99(c)(4) All ITAAC Complete Notification

Section 52.99(c)(4) would require the licensee to notify the NRC that all ITAAC are complete (All ITAAC Complete Notification). When the licensee submits the all ITAAC complete notification, the NRC would expect that all activities requiring ITAAC post-closure letters have been completed, that the associated ITAAC determination bases have been updated, and that all required notifications under proposed paragraph (c)(2) have been made.

Section 52.99(d) Licensee Determination of Non-Compliance With ITAAC

Paragraph (d) states the options that a licensee will have in the event that it is determined that any of the acceptance criteria in the ITAAC are not met. If an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC are met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by an application for a license amendment under 10 CFR 52.98(f). The NRC will consider and take action on the request for exemption and the license amendment application together as an integrated NRC action.

Also, if an activity that is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).

Section 52.99(e) NRC Inspection, Publication of Notices, and Availability of Licensee Notifications

Paragraph (e)(1) of this section indicates that the NRC is responsible for ensuring (through its inspection and audit activities) that the combined license holder performs and documents the completion of inspections, tests, and analyses in the ITAAC. Paragraph (e)(1) requires the NRC to publish, at appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a), notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses. Paragraph (e)(2) provides that the NRC shall make publicly available the licensee notifications under paragraph (c). In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete and detailed. Further, by the date of the **Federal Register** notice of intended operation and opportunity to request a hearing on whether acceptance criteria are met (under 10 CFR 52.103(a)), the NRC will make available the licensee notifications under paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) received to date.

V. Guidance

In conjunction with the issuance of this proposed rule, the NRC is issuing a proposed revision to its regulatory guidance in RG 1.215 on implementation of the requirements in 10 CFR 52.99. In this proposed revision, the NRC is endorsing Revision 4 to the existing industry ITAAC closure guidance in NEI 08–01, submitted to the NRC for endorsement on July 16, 2010 (ADAMS Accession No. ML102010076). The revised guidance is intended to provide an acceptable method by which licensees can implement the new requirements being proposed in this rulemaking. The staff will consider any comments received on the proposed rule in its final revisions to RG 1.215. The NRC expects that all guidance necessary to implement this rule will be available at the time that the final rule becomes effective.

VI. Availability of Documents

You can access publicly available documents related to this proposed rule using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0012.

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated:

Document	PDR	Web	ADAMS
SECY–09–0119, "Staff Progress in Resolving Issues Associated with Inspections, Tests, Analyses and Acceptance Criteria" (August 26, 2009).	X	X	ML091980372
SRM–M090922—Staff Requirements—Periodic Briefing on New Reactor Issues—Progress in Resolving Issues Associated with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC), 9:30 A.M., Tuesday, September 22, 2009 (October 16, 2009).	X	X	ML092890658
Inspection Procedure 40600, "Licensee Program for ITAAC Management"	X	X	ML072530607
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 0 (October 31, 2009).	X	X	ML091480076
NEI 08–01, "Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52," Revision 3 (January 2009).	X	.....	ML090270415
NEI 08–01, "Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52," Revision 4.	X	.....	ML102010076
Regulatory Analysis for Proposed Rule—Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (February 2011).	X	X	ML110040395
NUREG/BR–0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 2004).	X	X	ML042820192

VII. Plain Language

The Presidential memorandum, "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** caption of this document.

VIII. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

IX. Voluntary Consensus Standard

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The requirements in this rulemaking address procedural and information collection and reporting requirements necessary to support the NRC's regulatory activities on combined licenses under 10 CFR part 52, and to facilitate the NRC's conduct of hearings on ITAAC which may be held under Section 189 of the AEA. These requirements do not establish standards or substantive requirements with which combined license holders must comply. Thus, this rulemaking does not constitute establishment of a standard containing generally applicable requirements falling within the purview of the National Technology Transfer and Advancement Act and the implementing guidance issued by the Office of Management and Budget (OMB).

X. Environmental Impact—Categorical Exclusion

The NRC has determined that these amendments fall within the types of actions described as categorical exclusions under 10 CFR 51.22(c)(2) and (c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

XI. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This rule has been submitted to the OMB for review and approval of the information collection requirements.

1. *Type of submission, new or revision:* Revision.

2. *The title of the information collection:* 10 CFR Parts 2 and 52; Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria.

3. *Form number, if applicable:* N/A.

4. *How often the collection is required:* On occasion. Reports required under 10 CFR 52.99(c)(2) and (c)(4) are collected and evaluated during construction, (1) whenever a licensee determines that it has new information materially altering the basis for an ITAAC determination; and (2) once, when all ITAAC are complete.

5. *Who is required or asked to report:* Combined license holders, during the period of construction.

6. *An estimate of the number of annual responses:* 48 (44 annual responses plus 3.66 annualized one-time responses).

7. *The estimated number of annual respondents:* 7.33.

8. *The number of hours needed annually to complete the requirement or request:* 1,056 hours.

9. *Abstract:* The NRC is proposing to amend its regulations in 10 CFR 52.99 related to verification of nuclear power plant construction activities through ITAAC under a combined license. Specifically, the NRC is proposing new provisions that apply after a licensee has completed an ITAAC and submitted an ITAAC closure notification. The new provisions would require licensees to (1) report new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met; and (2) notify the NRC of completion of all ITAAC activities.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC Web site, *http://www.nrc.gov/public-involve/doc-comment/omb/index.html,* for 60 days after the signature date of this document.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by June 13, 2011 to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *Infocollects.Resource@NRC.gov* and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0151), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal rulemaking Web site, *https://www.regulations.gov,* Docket ID NRC–2010–0012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory

analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** section of this document. The analysis is available for inspection in the NRC's PDR (ADAMS Accession No. ML110040395), 11555 Rockville Pike, Rockville, Maryland 20852. The analysis may also be viewed and downloaded electronically via the Federal rulemaking Web site at *http://www.regulations.gov* by searching for Docket ID NRC–2010–0012.

XIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIV. Backfitting and Issue Finality

The NRC has determined that neither the backfit rule, 10 CFR 50.109, nor any of the finality provisions in 10 CFR part 52, apply to this proposed rule. Therefore, a backfit analysis is not required because the proposed ITAAC maintenance rule does not contain any provisions that would impose backfitting as defined in the backfit rule, nor does it contain provisions that are inconsistent with the finality provisions applicable to applicants for or holders of combined licenses in 10 CFR part 52.

The proposed rule would apply only to holders of combined licenses. The backfitting provisions in 10 CFR 50.109 protect holders of combined licenses, and the finality provisions in Subpart C of part 52 protect holders of combined licenses (with the exception discussed further in this document). There are no current holders of combined licenses; hence, those backfitting and finality provisions do not apply to this rulemaking. Subpart C of part 52 contains issue finality provisions which protect combined license applicants, but that protection extends only to issue resolution of matters resolved in referenced early site permits, standard design certifications, standard design approvals, or manufactured reactors. This proposed rule does not alter issue resolution associated with referenced early site permits, standard design certifications, standard design approvals, or manufactured reactors. Instead, this proposed rule addresses requirements concerning the Commission's finding that ITAAC are met, and the conduct of hearings addressing whether prescribed inspections, tests, and analyses have been performed and the acceptance criteria are met. To the extent that the proposed rule would revise these requirements for future combined licenses, the requirements would not constitute backfitting or otherwise be inconsistent with the finality provisions in 10 CFR part 52, because the requirements are prospective in nature and effect. Neither the backfit rule nor the issue finality provisions in 10 CFR part 52 were intended to apply to every NRC action, which substantially changes the obligations of future licensees under 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis or other evaluation for this proposed rule.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 2 and 52.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239. Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.340, paragraph (j) is revised to read as follows:

§ 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

* * * * *

(j) *Issuance of finding on acceptance criteria under 10 CFR 52.103.* The Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation, as appropriate, shall make the finding under 10 CFR 52.103(g) that acceptance criteria in a combined license are met within 10 days from the date of the presiding officer's initial decision:

(1) If the Commission or the appropriate Director is otherwise able to make the finding under 10 CFR 52.103(g) that the prescribed acceptance criteria are met for those acceptance criteria not within the scope of the initial decision of the presiding officer;

(2) If the presiding officer's initial decision, with respect to contentions that the prescribed acceptance criteria have not been met, finds that those acceptance criteria have been met, and the Commission or the appropriate Director thereafter is able to make the finding that those acceptance criteria are met;

(3) If the presiding officer's initial decision, with respect to contentions that the prescribed acceptance criteria will not be met, finds that those acceptance criteria will be met, and the Commission or the appropriate Director thereafter is able to make the finding that those acceptance criteria are met; and

(4) Notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, or a motion for stay under 10 CFR 2.342, or the filing of a petition under 10 CFR 2.206.

* * * * *

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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

Authority: Secs. 103, 104, 161, 182, 183, 185, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2235, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005), Secs. 147 and 149 of the Atomic Energy Act.

4. Revise § 52.99 to read as follows:

§ 52.99 Inspection during construction; ITAAC schedules and notifications; NRC notices.

(a) *Licensee schedule for completing inspections, tests, or analyses.* The licensee shall submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined at 10 CFR 50.10(a), whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. The licensee shall submit updates to the ITAAC schedules every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, the licensee shall submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under paragraph (c)(1) of this section.

(b) *Licensee and applicant conduct of activities subject to ITAAC.* With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria are met.

(c) *Licensee notifications.* (1) *ITAAC closure notification.* The licensee shall notify the NRC that prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met. The notification must contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met.

(2) *ITAAC post-closure notifications.* Following the licensee's ITAAC closure notifications under paragraph (c)(1) of this section until the Commission makes the finding under 10 CFR 52.103(g), the licensee shall notify the NRC, in a timely manner, of new information that materially alters the bases for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met.

(3) *Uncompleted ITAAC notification.* If the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation. The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met, including, but not limited to, a description of the specific procedures and analytical methods to be used for performing the prescribed inspections, tests, and analyses and determining that the prescribed acceptance criteria are met.

(4) *All ITAAC complete notification.* The licensee shall notify the NRC that all ITAAC are complete.

(d) *Licensee determination of non-compliance with ITAAC.* (1) In the event that an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by a request for a license amendment under 10 CFR 52.98(f).

(2) In the event that an activity is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).

(e) *NRC inspection, publication of notices, and availability of licensee notifications.* The NRC shall ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed. (1) At appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a), the NRC shall publish notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

(2) The NRC shall make publicly available the licensee notifications under paragraph (c) of this section. The NRC shall make publicly available the licensee notifications under paragraphs (c)(1) through (4) of this section no later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a).

Dated at Rockville, Maryland, this 6th day of May 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–11679 Filed 5–12–11; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG08

Small Business Size Standards: Transportation and Warehousing

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards

for 22 industries in North American Industry Classification System (NAICS) Sector 48–49, Transportation and Warehousing. As part of its ongoing initiative to review all size standards, SBA has evaluated all industries in NAICS Sector 48–49 that have receipts based size standards to determine whether the size standards should be retained or revised. This rule is one of a series of proposed rules that will examine industries grouped by a NAICS Sector. SBA has issued a White Paper entitled "Size Standards Methodology" and published in the October 21, 2009 issue of the **Federal Register** a notice that "Size Standards Methodology" is available on its Web site at *http://www.sba.gov/size* for public review and comments. The "Size Standards Methodology" White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

DATES: You must submit your comments to this proposed rule on or before July 12, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AG08 by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments; or

(2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments to this proposed rule on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an e-mail to *sizestandards@sba.gov.* You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, PhD, Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—receipts and number of employees. SBA uses financial assets, electric output and refining capacity as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based size standards to determine eligibility for those programs. Currently, SBA's size standards consist of 42 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities ("exceptions" in SBA's table of size standards). Thirty-one of these size levels are based on average annual receipts, eight are based on number of employees, and three are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and changes in the Federal contracting marketplace and industry structure. The last time SBA made an overall review of size standards was during the late 1970s to early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA believes a more manageable approach is a phased examination of a group of industries within a NAICS Sector. A NAICS Sector generally consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more industries. SBA will review the size standards for each industry in a NAICS Sector, and then will propose changing size standards for those industries for which currently available data and other relevant factors support doing so. Accordingly, this proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 48–49 as well as on the data and methodology it uses to evaluate and revise a size standard.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that was applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries within NAICS Sector 48–49, Transportation and Warehousing, and the impact of the proposed revisions to size standards on Federal small businesses assistance.

Size Standards Methodology

SBA has prepared a "Size Standards Methodology" White Paper for establishing, reviewing and modifying size standards when necessary. This document is available on SBA's Web site at *http://www.sba.gov/size.* SBA has also included its methodology in the electronic docket of this proposed rule as a supporting document at *http://www.regulations.gov.* SBA does not apply every feature of its methodology to every size standard evaluation because not all features are appropriate for every industry. For example, since this proposed rule covers all industries with receipts based standards in NAICS Sector 48–49, the methodology described here mostly applies to establishing receipts based standards. However, SBA makes the methodology available in its entirety for parties who have an interest in SBA's overall approach to evaluating, establishing and modifying small business size standards. SBA always explains its analysis in individual proposed and

final rules relating to size standards for specific industries. This proposed rule includes information regarding the factors SBA evaluated and the criteria the Agency used to propose any adjustments to size standards in NAICS Sector 48–49. It also explains why SBA has proposed to adjust some size standards in that sector but not others.

SBA welcomes comments from the public on a number of issues that it raises in its "Size Standards Methodology," such as suggestions on alternative approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's using anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology. Comments on the SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *http://www.regulations.gov;* the docket number is SBA–2009–0008; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *http://www.regulations.gov.* As of May 13, 2011, SBA has received four comments to its "Size Standards Methodology." The comments are available to the public at *http://www.regulations.gov.* SBA continues to welcome comments on its methodology from interested parties.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that "* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." Accordingly, the economic structure of an industry serves as the underlying basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to analyzing an industry's structure, SBA also considers current economic conditions, together with its own mission, program objectives, and the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule when it establishes small business size standards. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

Below is a discussion on SBA's analysis of the economic characteristics of each industry reviewed in this proposed rule, the impact of proposed size standards revisions on SBA loan and Federal procurement programs, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small. This proposed rule affords the public an opportunity to review and comment on the data and methodology SBA uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three "base" or "anchor" size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, SBA has set 100 employees as the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance programs. For Federal procurement purposes, however, the size standard for all firms in both the Wholesale Trade (NAICS Sector 42) and Retail Trade (NAICS Sector 44–45) is 500 employees under the SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries (1,141) for which SBA establishes size standards. Furthermore, the data SBA analyzes are static, but the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as "anchor comparison group"). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 48–49 that are reviewed in this proposed rule, this second comparison group consists of industries with the highest receipts based size standards that range from $23 million to $35.5 million in average receipts, with the weighted average being $29 million. SBA refers to this comparison group as

the "higher level receipts based size standard group."

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition and distribution of firms by size. SBA also evaluates, as an additional primary factor, the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance and other program factors, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standard. Below are brief descriptions of each of the five primary factors that SBA has evaluated in each industry in NAICS Sector 48–49 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA "Size Standards Methodology," available at *http://www.sba.gov/size.*

1. *Average firm size.* SBA computes two measures of average firm size: simple average and weighted average. For industries with receipts based size standards the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry under review is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor standard. In lieu of data on actual startup costs, SBA uses average assets size as a proxy measure to assess the levels of capital requirements for new entrants to an industry.

To calculate average assets size, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts size of firms in that industry. An industry with a significantly higher level of average assets than that of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, if the industry has a significantly smaller average assets size compared to the anchor comparison group, the anchor size standard or, in rare cases, one lower than the anchor, may be appropriate.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the "four-firm concentration ratio," a commonly used economic measure of market competition. SBA compares the four-firmconcentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor that SBA evaluates in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this indicates that small businesses are competitive in that industry. This supports adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This will support adopting a size standard above the anchor.

Concentration among firms is a measure of inequality of distribution. To evaluate the degree of inequality of distribution within an industry, SBA computes the Gini coefficient by constructing the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) in the horizontal axis and the cumulative percentages of receipts (or other measures of size) in the vertical axis. (For further detail, please refer to SBA's "Size Standards Methodology" on the SBA's Web site at *http://www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher Gini coefficient value than industries in the anchor comparison industry group this may, all else being equal, warrant a higher size standard than the anchor. Conversely, if an industry shows a similar or lower Gini coefficient than industries in the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the

small business Federal market share and industry-wide share may have a variety of causes, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required on Federal contracts as compared to typical commercial contracting work, and the size of contracting requirements of Federal customers. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal procurement trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect a significant level of contracting in which a revision to a size standard may have an impact on expanding small business opportunities.

Besides the impact on small business Federal contracting, SBA also evaluates the influence of a proposed size standard on SBA's loan programs. To do this, SBA examines the volume of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards reduce financial assistance to small businesses, higher size standards are supportable. However, if small businesses have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standard, consideration of this factor for determining the size standard may not be necessary.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2007 County Business Patterns (*see http://www.census.gov/econ/cbp/*) and data from the 2007 Economic Census (*see http://www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The Census tabulation provided SBA with industry-specific data on the number of firms, number of establishments and number of employees for companies by the size of firm based on the 2007 County Business Patterns and estimated annual payroll and estimated annual receipts of companies by the size of firm based on the 2007 Census. The data reflects the size class of the total company; however, the data itself, within a particular size class, represents the company's total data for a specific industry only. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio and distribution of firms by receipts and employment size.

In some cases, where Census data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector) or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or estimates of missing values were possible. Furthermore, the data are not available below the 6-digit NAICS Industry level and hence do not provide economic characteristics for sub-industry activities ("exceptions" in SBA's table of size standards).

Thus, when establishing, reviewing, or modifying size standards at the sub-industry levels ("exceptions") with significant Federal contracting (*i.e.,* $100 million or more in Federal contract dollars annually), SBA evaluates data from FPDS–NG and the Central Contractor Registration (CCR) using a two-step procedure. First, using FPDS–NG SBA identifies product service codes (PSCs) that correspond to specific activities or "exceptions." SBA then identifies firms that are active in Federal contracting involving those PSCs. Then, SBA evaluates for those firms revenue and employment data from CCR and FPDS–NG.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in the "SBA Size Standards Methodology" White Paper, which is available at *http://www.sba.gov/size.*

To calculate average assets SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009.

To evaluate Federal contracting trends, SBA examined data representing Federal contract awards for fiscal years 2007–2009. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses SBA examined data on its own guaranteed loan programs for fiscal years 2008–2010.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) requires a small business concern to be one that is (1) independently owned and operated, and (2) not dominant in its field of operation. SBA establishes size standards for the various industries at levels that would ensure that no firm qualifying as "small" would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards for industries from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). Currently, there are 31 different levels of receipts based size standards. They range from $0.75 million to $35.5 million, and many of them apply to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in Sector 48–49 that has a receipts based standard. In this proposed rule, SBA has not

reviewed the 15 employee based size standards in NAICS Sector 48–49. Those employee based size standards will remain in effect until SBA reviews industries that have employee based size standards. The eight "fixed" receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30.0 million, and $35.5 million. To establish these eight receipts based size standard levels SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following—$2.5 million to $4.5 million, $7 million, $9.0 million to $10 million, $12.5 million to $14.0 million, $25.0 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is also an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture (which are statutory) and those based on commissions (such as real estate brokers and travel agents), $5 million will include those industries with the currently lowest receipts based standards, which range from $2.0 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels, namely $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between the two of the fixed levels, SBA also established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate size levels reflect roughly similar proportional differences between the two successive size standard levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a specific size standard level for each industry, SBA believes that establishing different size standards for closely related industries may not be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, establishing a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than establishing separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services industries (NAICS 541511, NAICS 541112, NAICS 541513, and NAICS 541519), even though the industry data might support a distinct size standard for each industry (57 FR 27906 (June 23, 1992)). Within NAICS Sector 48–49, several industries currently have common size standards, some at the 3-digit NAICS (Subsector) level and others at 4-digit NAICS (Industry Group) level. In this rule, SBA proposes to retain the common size standards for those industries even if the data may support separate size standards for individual industries. Whenever SBA proposes a common size standard for closely related industries it will provide a justification for that in the proposed rule.

Evaluation of Industry Structure

SBA evaluated the structure of 42 industries and one sub-industry ("exception") in NAICS Sector 48–49, Transportation and Warehousing, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7.0 million size standards and is referred to as the "receipts based anchor comparison group." Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally considered appropriate for that industry. If an industry's structure is significantly different from the others in the anchor group, a size standard lower or higher than the anchor size standard might be selected. The level of the new size standard is determined based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the "higher level receipts based size standard comparison group." SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1 shows two measures of the average firm size (simple and weighted), average assets size, the four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Avg. firm size ($ million)		Avg. assets size ($ million)	Four-firm concentration ratio (%)	Avg. receipts of four largest firms ($ million) [a]	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.55	28.91	0.94	18.4	249.3	0.740
Higher Level	6.22	97.10	2.85	27.0	1,773.5	0.826

[a] To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7.0 million anchor size standard appropriate for that factor.

An industry factor with a value significantly above or below the anchor comparison group will generally warrant a size standard above or below the $7.0 million anchor. The level of the new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, an industry's simple average receipts of $4.0 million supports a $19 million size standard. The $4.0 million level is at the 52.5 percent point between the average firm size of $1.55 million for the anchor comparison group and $6.22 million for the higher level comparison group (($4.00 million − $1.55 million) ÷ ($6.22 million − $1.55 million) = 0.525 or 52.5%). This proportional difference is applied to the difference between the $7.0 million anchor size standard and the average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.52 million ([{$29.0 million − $7.0 million} * 0.525] + $7.0 million = $18.52 million). The final step is to round the estimated size standard of $18.52 million to the nearest fixed size standard level, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in "SBA Size Standards Methodology" which is available on its Web site at *www.sba.gov/size.* (However, it should be noted that figures in the "Size Standards Methodology" White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule). Table 2 (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple avg. receipts size ($ million)	*Or if* weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then size standard is ($ million)
< 1.34	< 25.81	< 0.85	< 180.0	< 0.736	5.0
1.34 to 1.87	25.81 to 33.56	0.85 to 1.07	180.0 to 353.2	0.736 to 0.746	7.0
1.88 to 2.61	33.57 to 44.41	1.08 to 1.37	353.3 to 595.7	0.747 to 0.759	10.0
2.62 to 3.57	44.42 to 58.35	1.38 to 1.76	595.8 to 907.5	0.760 to 0.777	14.0
3.58 to 4.79	58.36 to 76.18	1.77 to 2.26	907.6 to 1,305.8	0.778 to 0.799	19.0
4.80 to 5.96	76.19 to 93.22	2.27 to 2.74	1,305.9 to 1,686.9	0.800 to 0.821	25.5
5.97 to 7.02	93.23 to 108.72	2.75 to 3.17	1,687.0 to 2,033.2	0.822 to 0.840	30.0
> 7.02	> 108.72	> 3.17	> 2,033.2	> 0.840	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA evaluates Federal contracting data to assess, under current size standards, the extent to which small businesses are successful in getting Federal contracts. However, the available data on Federal contracting only identify businesses as small or other than small, and do not provide the exact size of the businesses receiving Federal contracts; this hinders SBA's attempts to conduct more precise analyses.

Given the above limitation of Federal contracting data, for the current comprehensive size standards review, SBA has decided to designate a size standard at one level higher than their current size standard for industries where the small business share of total Federal contracting dollars is between 10 and 30 percentage points lower than their shares in total industry receipts and at two levels higher than the current size standard if the difference is more than 30 percentage points.

Given the limitations of the FPDS data and the complex relationships among a number of variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is higher than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This enables SBA to support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology of incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 42 industries reviewed in this proposed rule, 9 industries averaged $100 million or more annually in Federal contracting during fiscal years 2007–2009. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) in four of those nine industries and a separate size standard was derived for that factor for each of them. Because the small business share of total Federal contracting dollars was already higher than the small business share of total industry receipts for the other five industries, the Federal procurement factor was not considered in determining the level of size standard for them. Thus, the latest data show that Federal contracting activity is insignificant for most of the industries in NAICS Sector 48–49 and, for the majority of those industries where it is significant, small businesses seem to be doing well in terms of their share in Federal marketplace relative to their share of industry's total sales.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS

industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, there is no estimated size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA "Size Standard Methodology." For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH INDUSTRY FACTOR

[Millions of dollars]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
NAICS	Simple average firm size	Weighted average firm size	Average assets size	Four-firm ratio (%)	Four-firm average size	Gini coefficient	Federal contract factor (%)	Calculated new size standard	Current size standard
481219, Other Non-Scheduled Air Transportation	$2.9 14.0	$31.4 7.0	$2.1 19.0	33.7	$115.9	0.793 $19.0		$14.0	$7.0
484110, General Freight Trucking—Local	1.0 5.0	7.8 5.0	0.3 5.0			0.694 $5.0		5.0	25.5
484121, General Freight, Trucking, Long-Distance, Truckload	3.0 14.0	64.7 19.0	1.1 10.0	13.0	2,761.9	0.857 $35.5	−37.1 $35.5	25.5	25.5
484122, General Freight, Trucking, Long-Distance, Less Than Truckload	10.8 35.5	335.7 35.5	4.2 $35.5	51.2	4,670.3 35.5	0.939 35.5		35.5	25.5
484210, Used Household and Office Goods Moving	2.0 10.0	70.5 19.0	0.7 5.0	27.6	1,059.8	0.799 $19.0		14.0	25.5
484220, Specialized Freight (except Used Goods) Trucking, Local	1.0 5.0	7.7 5.0	0.4 5.0	3.3	257.9	0.669 $5.0		5.0	25.5
484230, Specialized Freight (except Used Goods) Trucking, Long-Distance	2.7 14.0	28.8 7.0	1.1 10.0	8.0	541.3	0.811 $25.5	−29.1 $30.0	19.0	25.5
485111, Mixed Mode Transit Systems	2.4 10.0	22.7 5.0		65.6	21.3 5.0	0.739 $7.0		7.0	7.0
485112, Commuter Rail Systems	6.1 30.0	17.4 5.0		83.2	21.7 5.0	0.644 $5.0		10.0	7.0
485113, Bus and Other Motor Vehicle Transit Systems	5.5 25.5	86.1 25.5		46.3	306.0 7.0	0.877 $35.5		25.5	7.0
485119, Other Urban Transit Systems	6.8 30.0	78.8 25.5		86.6	63.3 5.0	0.884 $35.5		25.5	7.0
485210, Interurban and Rural Bus Transportation	7.1 35.5	131.3 35.5		60.2	249.3 7.0	0.873 $35.5		25.5	7.0
485310, Taxi Service	0.7 5.0	16.2 5.0	0.3 5.0			0.704 $5.0		5.0	7.0
485320, Limousine Service	0.9 5.0	17.7 5.0	0.4 5.0	14.3	138.3	0.698 $5.0		5.0	7.0
485410, School and Employee Bus Transportation	3.3 14.0	338.8 35.5	2.0 19.0			0.880 $35.5		25.5	7.0
485510, Charter Bus Industry	1.9 10.0	12.1 5.0	1.4 10.0	15.0	82.5	0.657 $5.0		7.0	7.0
485991, Special Needs Transportation	1.3 5.0	11.1 5.0				0.698 $5.0		5.0	7.0
485999, All Other Transit and Ground Passenger Transportation	1.0 5.0	9.1 5.0	0.4 5.0	15.9	42.9	0.686 $5.0		5.0	7.0
486210, Pipeline Transportation of Natural Gas	165.1 35.5	406.7 35.5		46.9	2,438.7 35.5	0.601 $5.0		25.5	7.0
486990, All Other Pipeline Transportation	39.7 35.5	56.0 14.0		77.5	207.5 7.0	0.305 $5.0		14.0	34.5

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH INDUSTRY FACTOR—Continued
[Millions of dollars]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
NAICS	Simple average firm size	Weighted average firm size	Average assets size	Four-firm ratio (%)	Four-firm average size	Gini coefficient	Federal contract factor (%)	Calculated new size standard	Current size standard
487110, Scenic and Sightseeing Transportation, Land	1.4 7.0	17.5 5.0	0.8 5.0	.....	.....	0.719 $5.0	.....	5.0	7.0
487210, Scenic and Sightseeing Transportation, Water	0.8 5.0	11.5 5.0	0.5 5.0	.....	.....	0.638 $5.0	.....	5.0	7.0
487990, Scenic and Sightseeing Transportation, Other	2.0 10.0	30.4 7.0	.....	.....	.....	0.784 $19.0	.....	14.0	7.0
488111, Air Traffic Control	9.7 35.5	49.8 14.0	.....	94.2	59.5 5.0	0.741 $7.0	.....	14.0	7.0
488119, Other Airport Operations	5.3 25.5	42.3 10.0	2.7 25.5	30.2	389.7	0.822 $30.0	.....	25.5	7.0
488190, Other Support Activities for Air Transportation	4.7 19.0	78.7 25.5	2.2 19.0	.....	.....	0.869 $35.5	−9.8	25.5	7.0
488210, Support Activities for Rail Transportation	6.3 30.0	28.3 7.0	.....	20.0	166.8	0.739 $7.0	.....	14.0	7.0
488310, Port and Harbor Operations	8.1 35.5	27.1 7.0	.....	.....	.....	0.698 $5.0	.....	14.0	25.5
488320, Marine Cargo Handling	30.4 35.5	189.6 35.5	20.2 35.5	.....	.....	0.824 $30.0	.....	35.5	25.5
488330, Navigational Services to Shipping	4.1 19.0	39.0 10.0	3.4 35.5	20.3	151.7	0.818 $25.5	12.1	25.5	7.0
488390, Other Support Activities for Water Transportation	2.7 14.0	21.2 5.0	2.0 19.0	22.7	97.5	0.793 $19.0	−10.2 $10.0	14.0	7.0
488410, Motor Vehicle Towing	0.6 5.0	7.7 5.0	0.2 5.0	.....	.....	0.499 $5.0	.....	5.0	7.0
488490, Other Support Activities for Road Transportation	1.7 7.0	15.1 5.0	0.7 5.0	23.3	128.8	0.770 $14.0	.....	10.0	7.0
488510, Freight Transportation Arrangement	3.2 14.0	41.7 10.0	0.7 5.0	8.8	905.5	0.793 $19.0	.....	14.0	7.0
Except Non-Vessel Owning Common Carriers and Household Goods Forwarders	.....	.....	.....	.....	.....	.....	.....	.....	25.5
488991, Packing and Crating	2.0 10.0	24.9 5.0	0.7 5.0	30.1	199.3	0.796 $19.0	.....	10.0	25.5
488999, All Other Support Activities for Transportation	0.7 5.0	4.8 5.0	0.3 5.0	52.0	2,105.0	0.679 $5.0	−21.0 $10.0	7.0	7.0
491110, Postal Service	.....	.....	.....	.....	.....	.....	.....	.....	7.0
492210, Local Messengers and Local Delivery	1.0 5.0	12.5 5.0	.....	12.2	126.5	0.699 $5.0	.....	5.0	25.5
493110, General Warehousing and Storage	5.4 25.5	14.4 5.0	4.0 35.5	33.3	2,265.5	0.626 $5.0	7.8	19.0	25.5
493120, Refrigerated Warehousing and Storage	5.8 25.5	15.9 5.0	6.2 35.5	30.7	307.3	0.627 $5.0	−24.3 $30.0	19.0	25.5
493130, Farm Product Warehousing and Storage	3.6 19.0	7.3 5.0	1.7 14.0	.....	.....	0.505 5.0$	.....	10.0	25.5
493190, Other Warehousing and Storage	5.0 25.5	10.7 5.0	3.2 35.5	30.7	554.8	0.554 $5.0	6.4	19.0	25.5

Common Size Standards

When many of the same businesses operate in the same multiple industries, SBA believes that a common size standard is more appropriate than separate standards for these industries even if the industry and relevant program data would support different size standards. Within NAICS Sector 48–49, several industries currently have common size standards, some at the 3-digit NAICS (Subsector) level and others at 4-digit NAICS (Industry Group) level. For example, all industries within NAICS Subsector 484 (Truck Transportation) and those in NAICS Subsector 485 (Transit and Ground Transportation) have the common size standards of $25.5 million and $7.0 million, respectively. Similarly, industries within NAICS Subsector 487 (Scenic and Sight Seeing Transportation), NAICS Industry Group

4881 (Support Activities for Air Transportation), NAICS Industry Group 4884 (Support Activities for Road Transportation), and NAICS Industry Group 493 (Warehousing and Storage) have the common size standards.

On May 2, 2006, SBA proposed to increase the size standards for NAICS 488111 (Air Traffic Control), NAICS 488119 (Other Airport Operations), and NAICS 488190 (Other Support Activities for Air Transportation) from $6.5 million to $21 million in average annual receipts. Given that many firms operate in each of these three industries, SBA proposed establishing a common $21 million size standard for this Industry Group (*see* 71 FR 28604). For the same reason, also in this rule, SBA has proposed a common size standard for all three industries for this NAICS Industry Group.

Besides the above industries, because of similarities among industries within NAICS Industry Group 4883 (Support Activities for Water Transportation), in this rule, SBA also proposes a common size standard for that Industry Group. Table 4 (below) shows these Subsectors and Industry Groups, along with the 6-digit NAICS industries under them. SBA evaluated industry and Federal contracting factors and derived a common size standard for each Subsector and each Industry Group using the same method as described above. These results are provided in Table 5 (immediately following Table 5).

TABLE 4—SUBSECTORS AND INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Subsector/industry group: NAICS codes	Subsector/industry group title	Industries: 6-digit NAICS codes
484	Truck Transportation	484110, 484121, 484122, 484210, 484220, 484230.
485	Transit and Ground Passenger Transportation	485111, 485112, 485113, 485119, 485210, 485310, 485320, 485410, 485510, 485991, 485999.
487	Scenic and Sightseeing Transportation	487110, 487210, 487990.
4881	Support Activities for Air Transportation	488111, 488119, 488190.
4883	Support Activities for Water Transportation	488310, 488320, 48830, 488390.
4884	Support Activities for Road Transportation	488410, 488490.
493	Warehousing and Storage	493110, 493120, 493130, 493190.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH SUBSECTOR AND EACH INDUSTRY GROUP

[Millions of dollars]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
NAICS code/title	Simple average firm size	Weighted average firm size	Average assets size	Four-firm ratio (%)	Four-firm average size	Gini coefficient	Federal contract factor (%)	Calculated size standard	Current standard
484 (Subsector), Truck Transportation	$2.1 10.0	$45.8 14.0	$0.8 5.0	9.4	$5,205.2	0.821 $25.5	−24.1% $30.0	$19.0	$25.5
485 (Subsector), Transit and Ground Passenger Transportation	1.7 7.0	56.2 14.0	0.9 7.0	28.0	1,892.8	0.810 $25.5	7.0%	14.0	7.0
487 (Subsector), Scenic and Sightseeing Transportation	1.0 5.0	12.9 5.0	0.6 5.0	.....	.....	0.694 $5.0	.....	5.0	7.0
4881 (Industry Group), Support Activities for Air Transportation	4.9 25.5	65.3 19.0	2.4 25.5	.....	.....	0.859 $35.5	−8.4%	30.0	7.0
4883 (Industry Group), Support Activities for Water Transportation	8.9 35.5	78.7 25.5	6.3 35.5	.....	.....	0.855 $35.5	11.8%	35.5	[1]
4884 (Industry Group), Support Activities for Road Transportation	0.8 5.0	8.4 5.0	0.3 5.0	7.8	139.6	0.594 $5.0	.....	5.0	7.0
493 (Subsector), Warehousing and Storage	5.4 25.5	12.8 5.0	4.0 35.5	23.2	2,315.2	0.604 $5.0	−0.7%	19.0	25.5

[1] Varies.

Special Considerations

1. Employee Based Size Standards

In this proposed rule, SBA has not reviewed 15 industries in NAICS Sector 48–49 that currently have employee based size standards. SBA will review those industries when it reviews the Manufacturing Sector (NAICS Sector 31–33) and other industries that have employee based size standards. SBA proposes, therefore, to leave the size standards for those 15 industries at their current levels until it reviews the employee based size standards.

2. Offshore Marine Air Transportation Services

Offshore Marine Air Transportation Services is currently an "exception" under both NAICS 481211 (Nonscheduled Chartered Passenger Air Transportation) and NAICS 481212

(Nonscheduled Chartered Freight Air Transportation), with the size standard of $28 million in average annual receipts. SBA will review this size standard when it reviews the employee based size standard for NAICS codes 481211 and 481212. Thus, in this rule, SBA proposes to keep the current $28 million size standard for Offshore Marine Air Transportation Services until it reviews those two principal NAICS industry codes.

3. Offshore Marine Water Transportation Services

Offshore Marine Water Transportation Services is an "exception" under NAICS Subsector 483 (Water Transportation) with the size standard of $28 million. All industries within NAICS Subsector 483 currently have an employee based standard. SBA has not reviewed employee based size standards in NAICS Sector 48–49, including those in Subsector 483. Thus, until the review of employee based size standards, SBA proposes to retain the current $28 million size standard for Offshore Marine Water Transportation Services.

4. Non-Vessel Owning Common Carriers and Household Good Forwarders

Non-Vessel Owning Common Carriers and Household Good Forwarders is an "exception" under NAICS 488510 (Freight Transportation Arrangement), with the size standard of $25.5 million in average annual receipts. As discussed above, the Census data are not available below the 6-digit NAICS industry level and hence SBA is not able to evaluate economic characteristics at the sub-industry levels ("exceptions"). This is also true for Non-Vessel Owning Common Carriers and Household Good Forwarders. In most cases, these "exceptions" are for procurement of specific goods or services within an industry where the Federal contracting is significant. However, for NAICS 488510 (including "exception"), Federal contracting averaged just $12 million annually during fiscal years 2007–2009, as compared to $41 billion in total revenue for the industry. Thus, given the lack of data and insignificant government contracting in this rule, SBA proposes to leave the size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders at the current level. SBA invites comments, along with supporting information, on this proposal as well as suggestions on whether a different size standard is more appropriate. Alternatively, in view of insignificant contracting, SBA also welcomes comments on whether it should continue to have a higher size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders as an "exception" under NAICS 488510 or should it apply the same size standard for the industry.

5. Postal Service (NAICS 491110)

Postal Service (NAICS 491) is one of the NAICS Sectors not covered by Census Bureau's Economic Census. Hence, SBA has no data to evaluate economic characteristics of the Postal Service Industry (NAICS 491110). Also, Federal contracting was not significant for this industry. Thus, given the lack of data, in this rule, SBA proposes to leave the size standard for Postal Service at the current level of $7 million in average annual revenue. SBA invites comments on this proposal as well as suggestions, along with supporting information, as to whether a different size standard is more appropriate.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through that program. For the industries reviewed, it is primarily small businesses much smaller than the size standards that use the SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 48–49, Transportation and Warehousing, needs an adjustment based on this factor.

Proposed Changes to Size Standards

The results of SBA analyses of industry specific size standards from Table 3 and results for common size standards from Table 5 are summarized in Table 6. In terms of industry specific size standards, the results support increases in size standards in 18 industries, decreases in 19 industries, and no changes in five industries and one sub-industry (exception to NAICS 488510). Similarly, based on common size standards, the results would support increases in 22 industries, decreases in 18 industries, and no changes in two industries and one sub-industry (exception to NAICS 488510).

Lowering small business size standards is not in the best interests of small businesses under current economic conditions. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest recession since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate has been 9.4 percent or higher since May 2009 and is forecast to remain around 9 percent or higher through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts, including recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS codes	NAICS industry title	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)	Current size standard ($ million)
481219	Other Non-Scheduled Air Transportation	$14.0	.....	$7.0
484110	General Freight Trucking—Local	5.0	$19.0	$25.5
484121	General Freight, Trucking, Long-Distance, Truckload	25.5	19.0	25.5
484122	General Freight, Trucking, Long-Distance, Less Than Truckload	35.5	19.0	25.5
484210	Used Household and Office Goods Moving	14.0	19.0	25.5

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS codes	NAICS industry title	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)	Current size standard ($ million)
484220	Specialized Freight (except Used Goods) Trucking, Local	5.0	19.0	25.5
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	19.0	19.0	25.5
485111	Mixed Mode Transit Systems	7.0	14.0	7.0
485112	Commuter Rail Systems	10.0	14.0	7.0
485113	Bus and Other Motor Vehicle Transit Systems	25.5	14.0	7.0
485119	Other Urban Transit Systems	25.5	14.0	7.0
485210	Interurban and Rural Bus Transportation	25.5	14.0	7.0
485310	Taxi Service	5.0	14.0	7.0
485320	Limousine Service	5.0	14.0	7.0
485410	School and Employee Bus Transportation	25.5	14.0	7.0
485510	Charter Bus Industry	7.0	14.0	7.0
485991	Special Needs Transportation	5.0	14.0	7.0
485999	All Other Transit and Ground Passenger Transportation	5.0	14.0	7.0
486210	Pipeline Transportation of Natural Gas	25.5	.....	7.0
486990	All Other Pipeline Transportation	14.0	.....	34.5
487110	Scenic and Sightseeing Transportation, Land	5.0	5.0	7.0
487210	Scenic and Sightseeing Transportation, Water	5.0	5.0	7.0
487990	Scenic and Sightseeing Transportation, Other	14.0	5.0	7.0
488111	Air Traffic Control	14.0	30.0	7.0
488119	Other Airport Operations	25.5	30.0	7.0
488190	Other Support Activities for Air Transportation	25.5	30.0	7.0
488210	Support Activities for Rail Transportation	14.0	.....	7.0
488310	Port and Harbor Operations	14.0	35.5	25.5
488320	Marine Cargo Handling	35.5	35.5	25.5
488330	Navigational Services to Shipping	25.5	35.5	7.0
488390	Other Support Activities for Water Transportation	14.0	35.5	7.0
488410	Motor Vehicle Towing	5.0	5.0	7.0
488490	Other Support Activities for Road Transportation	10.0	5.0	7.0
488510	Freight Transportation Arrangement	14.0	.....	7.0
Except	Non-Vessel Owning Common Carriers and Household Goods Forwarders	.....	.....	25.5
488991	Packing and Crating	10.0	.....	25.5
488999	All Other Support Activities for Transportation	7.0	.....	7.0
491110	Postal Service	.....	.....	7.0
492210	Local Messengers and Local Delivery	5.0	.....	25.5
493110	General Warehousing and Storage	19.0	19.0	25.5
493120	Refrigerated Warehousing and Storage	19.0	19.0	25.5
493130	Farm Product Warehousing and Storage	10.0	19.0	25.5
493190	Other Warehousing and Storage	19.0	19.0	25.5

Reducing size standards would decrease the number of firms that can participate in Federal financial and procurement assistance. Furthermore, lowering size standards solely based on analytical results would cut off more than 2,500 currently eligible small business firms from those very programs, which would run counter to what the Federal government is trying to do for small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA has decided not to propose to reduce the size standards for any industries. For industries where analyses might support lowering size standards, SBA proposes to retain the current size standards. SBA invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

Based on comparisons between industry specific size standards and common size standards within each Subsector or Industry Group, SBA finds that common size standards are more appropriate for several reasons. First, analyzing industries at a more aggregated Subsector or Industry Group level simplifies size standards analysis and the results are likely to be more consistent among related industries. Second, in most cases, industries within each Subsector or Industry Group currently have the same size standards and SBA believes it is better to keep the revised size standards also the same. Third, within each Subsector or Industry Group many of the same businesses tend to operate in the same multiple industries. SBA believes that common size standards reflect the Federal marketplace in those industries better than do different size standards for each industry. Fourth, industry specific size standards and common size standards are mostly within a reasonably close range.

For industries or sub-industries where both industry specific size standards and common size standards have been calculated, SBA, for the above reasons, proposes to apply common size standards. For industries or sub-industries where common size standards have not been estimated, SBA proposes to apply industry specific size standards.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and Jobs Act. Therefore, SBA proposes to retain the current size standards for

those industries for which its analyses suggested decreasing their size standards. Thus, of the 42 industries and one sub-industry in NAICS Sector 48–49 that were reviewed in this proposed rule, SBA proposes to increase size standards for 22 industries and retain the current standards for 20 industries and one sub-industry. Industries for which SBA has proposed to increase their size standards and proposed standards are shown in Table 7.

In addition, this is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) (75 FR 61597, 75 FR 61604, and 75 FR 61591). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons it has provided above in this proposed rule.

TABLE 7—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS codes	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
481219	Other Non-Scheduled Air Transportation	$14.0	$7.0
485111	Mixed Mode Transit Systems	14.0	7.0
485112	Commuter Rail Systems	14.0	7.0
485113	Bus and Other Motor Vehicle Transit Systems	14.0	7.0
485119	Other Urban Transit Systems	14.0	7.0
485210	Interurban and Rural Bus Transportation	14.0	7.0
485310	Taxi Service	14.0	7.0
485320	Limousine Service	14.0	7.0
485410	School and Employee Bus Transportation	14.0	7.0
485510	Charter Bus Industry	14.0	7.0
485991	Special Needs Transportation	14.0	7.0
485999	All Other Transit and Ground Passenger Transportation	14.0	7.0
486210	Pipeline Transportation of Natural Gas	25.5	7.0
488111	Air Traffic Control	30.0	7.0
488119	Other Airport Operations	30.0	7.0
488190	Other Support Activities for Air Transportation	30.0	7.0
488210	Support Activities for Rail Transportation	14.0	7.0
488310	Port and Harbor Operations	35.5	25.5
488320	Marine Cargo Handling	35.5	25.5
488330	Navigational Services to Shipping	35.5	7.0
488390	Other Support Activities for Water Transportation	35.5	7.0
488510	Freight Transportation Arrangement	14.0	7.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 48–49, Transportation and Warehousing, for which it has proposed to increase size standards, no firm at or below the proposed size standard is large enough to dominate its field of operation. At the proposed size standards, if adopted, small business shares of total industry receipts among those industries vary from less than 0.1 percent to 13.4 percent, with an average of 1.6 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on this industry.

Request for Comments

SBA invites public comments on the proposed rule, especially in the following areas.

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: $5.0 million, $7.0 million, $10.0 million, $14.0 million, $19.0 million, $25.5 million, $30.0 million and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. If not, SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. For industries in NAICS Sector 48–49 that SBA has reviewed, SBA has proposed receipts based size standards ranging from $7.0 million to $35.5 million in average annual revenue. SBA seeks feedback on whether the levels of proposed size standards are appropriate given the economic characteristics of each industry. SBA also seeks public opinion and suggestions on alternative standards, if they would be more appropriate, including whether an employee based size standard is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA has proposed to continue the common size standards for industries within NAICS Subsector 484 (Truck Transportation), NAICS Subsector 485 (Transit and Ground Transportation), NAICS Subsector 487 (Scenic and Sight Seeing Transportation), NAICS Industry Group 4881 (Support Activities for Air Transportation), NAICS Industry Group 4884 (Support Activities for Road Transportation), and NAICS Industry Group 493 (Warehousing and Storage). SBA has also proposed a common size standard for industries in NAICS Industry Group 4853 (Support Activities for Water Transportation). SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt a common size standard for those industries or establish a separate size standard for each industry based on industry-specific analyses.

b. Whether the levels of proposed common size standards for those industries are appropriate or what are more appropriate levels if the proposed standards are not appropriate.

4. SBA's proposed standards are based on the evaluation of five primary factors—average firm size, average assets size (as proxy of startup costs and entry barriers), the four-firm concentration ratio, distribution of firms by size, and small business share of Federal contracting dollars. SBA welcomes comments on whether it should consider other factors when evaluating or revising an industry's size standard. Please provide relevant data sources, if available.

5. SBA assigns equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue assigning equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries along with supporting information.

6. For some industries, SBA proposes to increase the size standards by a large amount, while for others the proposed increases are modest. SBA invites comment on whether it should, as a policy, limit the amount of increase or decrease to a size standard. Similarly, SBA also seeks feedback on whether it should, as a policy, establish certain minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

7. Given the lack of industry data at the sub-industry level, SBA has proposed to leave the size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders ("exception" under NAICS 488510) at its current level. SBA invites comments, along with supporting information, on this proposal. Alternatively, in view of insignificant Government contracting, SBA also welcomes comments on whether it should continue to have a higher size standard for Non-Vessel Owning Common Carriers and Household Good Forwarders as an "exception" under NAICS 488510 or should it apply the same $14 million proposed size standard for the industry.

8. Because of the lack of data to review the industry structure, SBA has proposed to leave the size standard for Postal Service (NAICS 491110) at the current level of $7 million in average annual revenue. SBA invites comments on this proposal as well as suggestions, along with supporting information, if a different size standard is more appropriate.

9. SBA requests comments on whether it should lower size standards. SBA has proposed not to reduce small business size standards where applying its "Size Standards Methodology," might suggest lowering them. Rather, SBA opted to retain the current standards for those industries. SBA explained its reasons for this in the **SUPPLEMENTARY INFORMATION** above. SBA seeks comments, as it does in its "Size Standards Methodology" (see Policy Issue i on page 47) on whether it should reduce size standards at all. Because this is a policy issue, please provide documentation to reinforce your comments either in support of or opposition to this issue.

10. For analytical simplicity and efficiency, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values as was SBA's methodology in its past size regulations. SBA welcomes any comments on this procedure and suggestions for alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed revisions to size standards in this proposed rule. This will help SBA move forward with its review of size standards for other NAICS Sectors. Commenters that address specific size standards for one or more industries or group of industries should include data and/or other information that support their comments. If comments address the use of size standards for Federal procurement programs, SBA suggests that commenters relate their comments to the size of contracts awarded, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 12988, 13132 and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that it needs to adjust certain size standards in NAICS Sector 48–49, Transportation and Warehousing, to reflect the economic characteristics of small businesses and Federal marketplace in those industries better. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA must establish distinct definitions of which businesses are small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses. Federal procurement provides targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Other Federal agencies also use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive. In the 22 industries in NAICS Sector 48–49 for which SBA has proposed increasing size standards, SBA estimates that about 1,200 more firms will gain small business status and become eligible for these programs. That number is 0.7 percent of the total number of firms in those industries defined as small under the current standards. If adopted as proposed, this will increase the small business share of total industry receipts in those industries from 36 percent under the current size standards to 39 percent.

The benefits of proposed increases to size standards, if adopted, will accrue to three groups: (1) Businesses that are above the current size standards will gain small business status under the higher size standards, thereby becoming able to participate in Federal small business assistance programs; (2) growing small businesses that are close

to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

Based on the data for fiscal years 2007–2009, 68 percent of total Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 22 industries for which SBA has proposed increasing size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could obtain Federal contracts totaling up to $25 million per year under the small business set-aside program, the 8(a), HUBZone, WOSB, and SDVO SBC Programs and other unrestricted procurements. The added competition for many of these procurements may also result in a lower price to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, based on fiscal years 2009–2010 data, SBA estimates 10–15 additional loans totaling $2 million to $3 million in Federal loan guarantees could be made to these newly defined small businesses. Because of the size of these loans, however, most loans were made primarily to small businesses that are well below their industry size standards. The recently enacted Jobs Act increased the maximum limit of SBA 7(a) and 504 loans from $2 million to $5 million ($5.5 million for manufacturers under the 504 loan program). In addition, the Jobs Act not only adopted the tangible net worth based and net income based alternative size standard used in 504 loans for 7(a) loans, it also increased the maximum limit of tangible net worth from $8 million to $15 million and that of net income from $3 million to $5 million. Thus, combined with these changes that are aimed at expanding credit opportunities for small businesses, proposed increases to the size standards will likely result in additional SBA loans to small businesses. However, given the lack of data, SBA is not able to estimate the extent of their number and the total loan amount.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. The EIDL Program is contingent on the number and severity of disasters, which SBA cannot estimate for the future. Therefore, a meaningful estimate of those benefits is impractical.

To the extent that newly defined small businesses become active in Federal procurement and loan programs, there may be some additional administrative costs to the Federal Government associated with additional firms seeking to apply for Federal small business procurement opportunities, additional firms seeking SBA guaranteed loans, additional firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database, and additional firms seeking certification as 8(a) or HUBZone firms or those qualifying for small business, WOSB, SDVO SBC, and SDB status. For these businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these additional administrative requirements.

The costs to the Federal Government may be higher for some contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders, although there will be more small businesses eligible to participate. In addition, higher costs may result when more full and open contracts are awarded to HUBZone price evaluation preferences. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices.

The proposed increases to size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate the actual outcome of the gains and losses among small and large businesses with certainty, several likely impacts can be identified. There will likely be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies may decide to set aside more contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these small businesses may be eligible for a price evaluation preference for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. A greater number of Federal contracts set aside for all small businesses may offset this impact. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because the FPDS–NG data only identify the size of a business receiving a Federal contract as a small businesses or as an other than small businesses; FPDS–NG data do not provide the exact size of the business.

The proposed revisions to the existing size standards for Transportation and Warehousing industries are consistent with SBA's statutory mandate to assist small business. This regulatory action also promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Orders 12866 and 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563 are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues.

Also, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current

standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of NAICS Sector 48–49, Transportation and Warehousing, is consistent with EO 13653, Sec 6. calling for retrospective Analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries in no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010 the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule does not have any Federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose new reporting or record keeping requirements, other than those already required of SBA.

Regulatory Flexibility Act, 5 U.S.C., 601–612

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in NAICS Sector 48–49, Transportation and Warehousing. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA Economic Injury Disaster Loans, and other Federal small business assistance.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule? (2) what is SBA's description and estimate of the number of small entities to which the rule will apply? (3) what are the projected reporting, record keeping and other compliance requirements of the rule? (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

Most of the size standards for industries in NAICS Sector 48–49, Transportation and Warehousing, have not been reviewed since the early 1980s. Technology, productivity growth, global competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. In addition, the recently enacted Small Business Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect economic characteristics and the Federal marketplace in those industries.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that approximately 1,200 additional firms will become small because of increases in size standards in 22 industries. That represents 0.7 percent of total firms in those industries. This will result in an increase in the small business share of total industry receipts in those industries from about 36 percent under the current size standard to nearly 39 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many either have lost their small business eligibility or find it difficult to compete with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that have either exceeded or are about to exceed the size standards.

(3) What are the projected reporting, record keeping and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify, at least annually, that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters access to Federal small business assistance, but does not impose a regulatory burden because they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal

agencies to develop and use different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator. 13 CFR 121.903. The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration. 5 U.S.C. 601(3).

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By statute, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance. Other than varying the size standards by industry and changing the measure of business size, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 et seq., 111 Stat. 2592.

2. In § 121.201, in the table, revise the entries for "481219", "485111", "485112", "485113", "485119", "485210", "485310", "485320", "485410", "485510", "485991", "485999", "486210", "488111", "488119", "488190", "488210", "488310", "488320", "488330", "488390", and "488510"

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
	Sector 48–49—Transportation and Warehousing		
*	* * * * *	*	*
481219	Other Non-Scheduled Air Transportation	$14.0	
*	* * * * *	*	*
485111	Mixed Mode Transit Systems	14.0	
485112	Commuter Rail Systems	14.0	
485113	Bus and Other Motor Vehicle Transit Systems	14.0	
485119	Other Urban Transit Systems	14.0	
485210	Interurban and Rural Bus Transportation	14.0	
485310	Taxi Service	14.0	
485320	Limousine Service	14.0	
485410	School and Employee Bus Transportation	14.0	
485510	Charter Bus Industry	14.0	
485991	Special Needs Transportation	14.0	
485999	All Other Transit and Ground Passenger Transportation	14.0	
*	* * * * *	*	*
486210	Pipeline Transportation of Natural Gas	25.5	
*	* * * * *	*	*
488111	Air Traffic Control	30.0	
488119	Other Airport Operations	30.0	
488190	Other Support Activities for Air Transportation	30.0	
488210	Support Activities for Rail Transportation	14.0	
488310	Port and Harbor Operations	35.5	
488320	Marine Cargo Handling	35.5	
488330	Navigational Services to Shipping	35.5	
488390	Other Support Activities for Water Transportation	35.5	
*	* * * * *	*	*
488510	Freight Transportation Arrangement	14.0	
*	* * * * *	*	*

Dated: May 3, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–11717 Filed 5–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG07

Small Business Size Standards: Professional, Scientific and Technical Services.

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: On March 16, 2011, the U.S. Small Business Administration (SBA or Agency) proposed to increase small business size standards for 35 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services. SBA provided a 60-day comment period ending on May 16, 2011. In this notice, SBA is extending the comment period an additional 30 days to June 15, 2011.

DATES: The comment period for the proposed rule published on March 16, 2011, at 76 FR 14323, is extended through June 15, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AG07 by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments; or

(2) *Mail/Hand Delivery/Courier:* Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: The SBA's Office of Size Standards at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

In the proposed rule (76 FR 14323), SBA sought public comment on whether the proposed increases to size standards are appropriate given the economic characteristics of industries. Based on its analysis of industry and Federal procurement data and the use of a common size standard, for some industries SBA proposed to increase the size standards by more than three times their current levels (*e.g.,* Engineering, Architectural and Related Services), while for some other industries proposed increases are more modest (*e.g.,* Computer System Designs and Related Services). SBA also sought public feedback on a number of policy issues regarding its size standards methodology, such as whether SBA's proposal to apply eight fixed size standards levels is appropriate to simplify size standards and whether SBA should adopt a common size standards for related industries although the analysis might support a different size standard for each industry.

As of May 9, 2011, SBA has received over 210 comments to the proposed rule which are posted on *http://www.regulations.gov.* Some comments support SBA's proposed increases, some feel that proposed increases are too large, and others believe that proposed increases are too small. Given the impact the proposed changes might have on affected businesses and the lack of consensus in the comments received to date, SBA believes that the Agency and the affected industries will benefit from more public input before it finalizes any changes. Therefore, SBA is extending the comment period to June 15, 2011. This will also give more time to affected businesses and interested parties to review the proposed changes and prepare accurate, constructive and convincing comments to the proposed rule.

Dated: May 9, 2011.

Joseph Jordan,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. 2011–11707 Filed 5–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0448; Directorate Identifier 2007–SW–51–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified Eurocopter France Model EC 120B helicopters. This proposed AD would require modifying the pilot cyclic control friction device by replacing a certain thrust washer with two thrust washers. This proposed AD is prompted by an incident in which the pilot encountered a sudden restriction of the cyclic control movement during flight. The actions specified by this proposed AD are intended to prevent jamming of a pilot cyclic control stick and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 12, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2011–0448, Directorate Identifier 2007–SW–51–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

The Direction Generale de l'Aviation Civile France (DGAC), which is the aviation authority for France, has issued French AD No. F–2005–175, dated October 26, 2005, on behalf of the European Aviation Safety Agency (EASA), the Airworthiness Authority of the State of Design for the affected helicopters, to correct an unsafe condition for the Eurocopter France Model EC 120B helicopters.

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 67A011, Revision 1, dated October 7, 2005 (ASB), which specifies a modification to preclude the risk that the pilot cyclic control stick will jam. The modification consists of replacing the existing single-piece thrust washer, part number (P/N) C671A1006201, with two thrust washers, P/N C671A1018201 and P/N C671A1019201. The DGAC classified this alert service bulletin as mandatory and issued AD No. F–2005–175, dated October 26, 2005, to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, the DGAC, on behalf of the EASA, their technical representative, has notified us of the unsafe condition described in the DGAC AD. We are proposing this AD because we evaluated all information provided by the DGAC and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require replacing a single-piece thrust washer, P/N C671A1006201, with two thrust washers, P/N C671A1018201 and P/N C671A1019201, to prevent the jamming of the pilot cyclic control stick.

Differences Between This Proposed AD and the DGAC AD

The DGAC AD requires compliance with the ASB no later than December 31, 2005. Our proposed AD would require compliance within 30 days after the effective date of the AD.

Costs of Compliance

We estimate that this proposed AD would affect 114 helicopters of U.S. registry and the proposed actions would take approximately 3 work hours per helicopter to accomplish at an average labor rate of $85 per work hour. Required parts would cost approximately $50 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators would be $34,770 for the entire fleet, or $305 per helicopter, to replace the single thrust washer with two thrust washers.

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. FAA–2011–0448; Directorate Identifier 2007–SW–51–AD.

Applicability: Model EC 120B helicopters, serial numbers up to and including 1385, with a thrust washer, part number (P/N) C671A1006201, installed on the pilot cyclic control stick friction device; and a pilot cyclic stick, P/N C671A1007101, P/N C671A1007102, or C671A1003102, installed, certificated in any category.

Compliance: Required within 30 days, unless accomplished previously.

To prevent jamming of a pilot cyclic control stick and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the pilot cyclic control stick; replace the thrust washer, P/N C671A1006201, with two thrust washers, P/N C671A1018201 and P/N C671A1019201; reinstall the pilot cyclic control stick; and perform a functional test of the cyclic control.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, ASW–111, 2601 Meacham Blvd., Fort Worth,

Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 2700: Flight Control System.

Note: The subject of this AD is addressed in Direction Generale de l'Aviation Civile (France) AD No. F–2005–175, dated October 26, 2005, and Eurocopter Alert Service Bulletin No. 67A011, Revision 1, dated October 7, 2005

Issued in Fort Worth, Texas, on April 27, 2011.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–11752 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0454; Directorate Identifier 2009–SW–54–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. This proposed AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that the manufacturer has received some reports of deterioration and two reports of failure of Starflex star arm ends. These deteriorations generated high-amplitude vibrations in flight requiring precautionary landings. They state these deteriorations are due to the strong effect of temperature on the strength of the bush-to-Starflex star arm end attachment. Consequently, the MCAI AD requires modification of the frequency adapters and the frequency adapter bushes to improve the ventilation in the area on the star arm end. This proposed AD is intended to require modifying the main rotor frequency adapters to reduce the temperature in the area, to prevent failure of the star arm end, severe vibration, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by June 13, 2011.

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

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

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (800) 232–0323, fax (972) 641–3710 or at *http://www.eurocopter.com.*

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic 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: DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0454; Directorate Identifier 2009–SW–54–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD (EAD) No. 2006–0362–E, dated November 30, 2006, to correct an unsafe condition for the specified Eurocopter model helicopters. The MCAI AD states: "This Emergency Airworthiness Directive is issued following some reports of deterioration and two reports of failure of Starflex star arm ends. These deteriorations generated high-amplitude vibrations in flight, compelling the pilot to carry out a precautionary landing, in each of these cases. The failure of the Starflex star arm end could make it impossible to control the helicopter. These deteriorations are due to the strong effect of temperature on the strength of the bush-to-Starflex star arm end attachment. Consequently, this EAD requires modification (MOD 0762C39) of the frequency adapters and the frequency adapter bushes, in order to improve the ventilation in the area on the star arm end, on helicopters operated in hot climatic conditions and/or tropical and damp atmosphere."

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

Related Service Information

ECF has issued one Emergency Alert Service Bulletin, dated November 23, 2006, with four different numbers: No. 62.00.24 is for the civil Model SA–365N, AS–365N1, AS–365N2, and AS–365 N3; No. 62.14 is for the civil Model SA–366G1; No. 65.45 is for the Model SA–365C, C1, and C2; and No. 62.00.10 is for the non-FAA type certificated military Model 565 helicopters. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their Technical Agent, has informed us of the unsafe condition described in the MCAI

AD and the referenced service information. We are proposing this AD because we evaluated all the information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Differences Between This Proposed AD and the MCAI AD

This proposed AD differs from the MCAI AD as follows:

- We refer to flight hours as hours time-in-service.
- We refer to a check as an inspection if it is an action performed by maintenance personnel rather than a pilot.
- We omit the phrase "hot climatic conditions and/or in tropical and damp atmosphere" because it is unenforceable.

Costs of Compliance

We estimate that this proposed AD would affect about 37 helicopters of U.S. registry. We also estimate that it would take about 12 work-hours per helicopter to modify the frequency adapters and bushes. The average labor rate is $85 per work-hour. Required parts would cost about $960 per helicopter. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $73,260.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this proposed 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2011–0454; Directorate Identifier 2009–SW–54–AD.

Comments Due Date

(a) We must receive comments by June 13, 2011.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that the manufacturer has received some reports of deterioration and two reports of failure of Starflex star arm ends. These deteriorations generated high-amplitude vibrations in flight requiring precautionary landings. They state these deteriorations are due to the strong effect of temperature on the strength of the bush-to-Starflex star arm end attachment. Consequently, the MCAI AD requires modification of the frequency adapters and the frequency adapter bushes to improve the ventilation in the area on the star arm end. The proposed AD is intended to require modifying the main rotor frequency adapters to reduce the temperature in the area, to prevent failure of the star arm end, severe vibration, and subsequent loss of control of the helicopter.

Actions and Compliance

(e) For a main rotor head frequency adapter, pre MOD 0762C39, within 110 hours time-in-service (TIS), remove the main rotor blades, modify the frequency adapters and bushes, and change the part number of the frequency adapter as shown in Figures 1 through 5 and by following the Accomplishment Instructions, paragraph 2.B.2., of Eurocopter Emergency Alert Service Bulletin (EASB) No. 62.00.24 for the Model SA–365N, N1, AS–365N2, and AS 365 N3; No. 62.14 for the Model SA–366G1; and No. 65.45 for the Model SA–365C, C1, and C2 helicopters; all dated November 23, 2006. This modification is MOD 0762C39.

Note: The one Eurocopter EASB contains four different EASB numbers, three (Nos. 62.00.24, 62.14, and 65.45) that apply to different civil Eurocopter model helicopters and one (No. 62.00.10) that only applies to non-FAA type-certificated military Model 565 helicopters and is not incorporated by reference.

(f) For each main rotor head frequency adapter modified per MOD 0762C39, within 10 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 10 hours TIS, inspect to determine whether the safety wire is in place on the trailing edge of the frequency adapter and whether the holes in the frequency adapters and the frequency adapter bushes, as shown in Figure 5 of the EASB for your model helicopter, are blocked.

(1) If the lockwire is missing from the trailing edge of the frequency adapter, before further flight, reposition the bush if it has turned and install more safety wire.

(2) If a hole is blocked, before further flight, unblock the hole.

(g) Before installing a frequency adapter or bush, modify the frequency adapter or bush and change the part number in accordance with paragraph (e) of this AD.

Differences Between This AD and the MCAI AD

(h) This AD differs from the MCAI AD as follows:

(1) We refer to flight hours as hours TIS.

(2) We refer to the check specified in the MCAI AD as an inspection because it is an action performed by maintenance personnel rather than a pilot.

(3) We omit the phrase "hot climatic conditions and/or in tropical and damp atmosphere" because it is unenforceable.

Other Information

(i) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(j) MCAI AD No. 2006–0362–E, dated November 30, 2006, contains related information.

Joint Aircraft System/Component (JASC) Code

(k) The Joint Aircraft System/Component (JASC) Code is 5311: Main Rotor Head.

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

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–11878 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0453; Directorate Identifier 2008–SW–16–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland Model EC135 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland (ECD) Model EC135 helicopters. This proposed AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the aviation authority of the Federal Republic of Germany, with which we have a bilateral agreement, to identify and correct an unsafe condition. The MCAI AD states that in the past, the FADEC FAIL caution light illuminated on a few EC135 T1 helicopters. They state that this was caused by a discrepancy in the parameters which were generated within the fuel main metering unit and transmitted to the FADEC. This discrepancy led to the display of the FADEC FAIL caution light and "freezing" of the fuel main metering valve at its position resulting in loss of the automatic engine control in the affected system. With the EASA AD, a synchronization procedure for pilots, which was already used in the past, is being re-introduced, which prevents the parameter discrepancy arising and thus sustains the automatic engine control.

The proposed AD actions are intended to prevent failure of the FADEC to automatically meter fuel, indicated by a FADEC FAIL cockpit caution light, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by June 13, 2011.

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

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

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

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 proposed AD, the economic 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: Eric Haight, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76137, telephone (817) 222–5204, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0453; Directorate Identifier 2008–SW–16–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Luftfahrt-Bundesamt, which is the aviation authority for the Federal Republic of Germany, has issued AD No. 2002–333, dated September 16, 2002, to correct an unsafe condition for this German-certificated product. The MCAI AD states that in the past, the FADEC FAIL caution light illuminated on a few EC135 T1 helicopters. They state that this was caused by a discrepancy in the parameters which were generated within the fuel main metering unit and transmitted to the FADEC. This discrepancy led to the display of the FADEC FAIL caution light and "freezing" of the fuel main metering valve at its position resulting in loss of the automatic engine control in the affected system. Despite measures undertaken by Turbomeca to eliminate this problem (software improvements TU19C, TU23C and TU45C), additional FADEC FAIL cases have occurred on EC 135 T1 helicopters for which no explanation has been found. Therefore, a discrepancy in the parameters similar to those in the past cannot be ruled out. With this proposed AD, a synchronization procedure for pilots, which was already used in the past, is being re-introduced, which prevents the parameter discrepancy arising and thus sustains the automatic engine control. To date, there is no terminating action to this required manual pilot synchronization procedure.

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

Related Service Information

ECD has issued Alert Service Bulletin No. EC135–71A–024, dated August 6, 2002 (ASB). The ASB contains copies of special information to be inserted into the Rotorcraft Flight Manual (RFM) for synchronizing fuel control components for sustaining automatic engine control. The ASB specifies making copies of the RFM pages contained in the ASB, cutting them out, and filing them in the RFM. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in this service information.

FAA's Determination and Requirements of This Proposed AD

This model helicopter has been approved by the aviation authority of the Federal Republic of Germany and is approved for operation in the United States. Pursuant to our bilateral

agreement with that State of Design Authority, we have been notified of the unsafe condition described in the MCAI AD and service information. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI AD

We use a 50-hour TIS compliance time rather than before further flight as used in the MCAI AD. Also, the MCAI AD states to follow the ASB and insert pages into the RFM. We did not follow the ASB, which requires the RFM information to be filed in the Section 4, Normal Procedures, of the RFM. To make compliance with the information mandatory, we are requiring that it be inserted into the Section 2, Limitations Section of the RFM.

Costs of Compliance

We estimate that this proposed AD would affect about 20 helicopters of U.S. registry. We also estimate that it would take about ½ work-hour to copy and insert the synchronization procedure into the RFM. The average labor rate is $85 per hour. We estimate the cost of the proposed AD on U.S. operators to be $850.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter Deutschland: Docket No. FAA–2011–0453; Directorate Identifier 2008–SW–16–AD.

Comments Due Date

(a) We must receive comments by June 13, 2011.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EC135 helicopters with Turbomeca Arrius 2B or 2B1 engines installed, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that in the past, the FADEC FAIL caution light illuminated on a few EC135 T1 helicopters. They state that this was caused by a discrepancy in the parameters which were generated within the fuel main metering unit and transmitted to the FADEC. This discrepancy led to the display of the FADEC FAIL caution light and "freezing" of the fuel main metering valve at its position resulting in loss of the automatic engine control in the affected system. A discrepancy in the parameters similar to those in the past cannot be ruled out. With this AD, a synchronization procedure for pilots is being re-introduced, which prevents the parameter discrepancy arising and thus sustains the automatic engine control.

Actions and Compliance

(e) Within 50 hours time-in-service (TIS), unless already done, either insert the following procedure by making pen and ink changes to the Rotorcraft Flight Manual (RFM) or by inserting a copy of this AD into the Limitations Section of the RFM.

"SPECIAL INFORMATION FOR OEI/AUTOROTATION TRAINING AND APPROACH/LANDING PREPARATION

In order to prevent a malfunction, which could lead to a FADEC FAIL indication, the following procedure is mandatory:

The procedure shown below must be performed while in a steady flight condition and at a safe altitude:

—Before initiation of every approach (with or without landing)

—During training of OEI or Autorotation before every switch-over to IDLE

CAUTION: DURING THE RESET PROCEDURE DESCRIBED IN THE FOLLOWING, NO INPUTS ARE TO BE MADE TO THE COLLECTIVE LEVER OR TO THE TWIST GRIP FOR MANUAL ENGINE CONTROL, SINCE THIS CAN LEAD TO AN INEFFECTIVE SYNCHRONIZATION.

The reset procedure is identical for each of two systems and is to be applied for both engines, one after the other.

Procedure

1. ENG MODE SEL switch—Set from NORM TO MAN

After illumination of the ENG MANUAL caution:

2. ENG MODE SEL switch—Set from MAN to NORM: ENG MANUAL caution must go off

Repeat procedure for second engine."

Differences Between This FAA AD and the MCAI AD

(f) We use a 50-hour TIS compliance time rather than before further flight. Also, the MCAI AD states to follow the ASB and insert pages into the RFM. We did not follow the ASB, which requires the RFM information to be filed in the Section 4, Normal Procedures, of the RFM. To make compliance with the information mandatory, we are requiring that it be inserted into the Section 2, Limitations Section of the RFM.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Eric Haight, Aviation Safety Engineer, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5204, fax (817) 222–5961, has the authority to approve AMOCs, if requested, for this AD using the procedures found in 14 CFR 39.19.

Related Information

(h) MCAI AD 2002–333, dated September 16, 2002, contains related information.

Air Transport Association of America (ATA) Tracking Code

(i) The ATA Code is 7600: Engine Controls.

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

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–11882 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0449; Directorate Identifier 2010–SW–021–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Model 206A, 206B, and 206B3 Helicopters

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified Bell model helicopters. This proposed AD would require revising the Operating Limitations, Section 1, of the Rotorcraft Flight Manual (RFM) to add an operating limitation when a litter kit is installed. This proposed AD is prompted by the need for corresponding operating limitations prohibiting flight, including hover, with the litter doorpost removed when certain litter kits are installed. The actions specified by this proposed AD are intended to add an operating limitation when a litter kit is installed to prohibit flight with the doorpost removed to prevent loss of structural integrity of the fuselage.

DATES: Comments must be received on or before July 12, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272, or at *http://www.bellcustomer.com/files/.*

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Wiley, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5134, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the caption **ADDRESSES**. Include the Docket No. "FAA–2011–0449, Directorate Identifier 2010–SW–021–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

Bell reissued RFM Supplement (RFMS) BHT–206A–FMS–8 for the Model 206A, BHT–206B–FMS–8 for the Model 206B, and BHT–206B3–FMS–2 for the Model 206B3 helicopters, all dated December 30, 2009, approved by Transport Canada and the FAA. The revisions to the RFMS were reformatted to match the RFM and to add a "Type of Operation" paragraph to Section 1 of the "Operating Limitations," which states: "Flight, including hover, with litter doorpost removed is not approved. Litter doorpost may be removed and re-installed with rotor turning at flat pitch."

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. We are proposing this AD because we evaluated all information provided by Transport Canada and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs. This proposed AD would require revising the RFM by inserting into the Operating Limitations, Section 1, of the RFM the following statement: "Flight, including hover, with litter doorpost removed is prohibited." This revision may be made by pen and ink changes, inserting a copy of this AD into the RFM, or inserting a copy of the RFMS dealing with Litter Kits into the RFM as follows: For Model 206A helicopters—inserting RFMS BHT–206A–FMS–8, dated December 30, 2009, into RFM BHT–206A–FM–1, dated July 2, 2009; for Model 206B helicopters—inserting RFMS BHT–206B–FMS–8, dated December 30, 2009, into RFM BHT–206B–FM–1, dated July 2, 2009; and for Model 206B3 helicopters—inserting RFMS BHT–206B3–FMS–2, dated December 30, 2009, into RFM BHT–206B3–FM–1, dated March 24, 2010. This limitation is required to prevent loss of structural integrity of the helicopter fuselage.

Costs of Compliance

We estimate this proposed AD would affect 1,463 helicopters of U.S. registry. The cost to revise the operating limitations section of the RFM for each helicopter would be negligible, and there are no required parts.

Regulatory Findings

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

power and responsibilities among the various levels of government.

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Bell Helicopter Textron Canada: Docket No. FAA–2011–0449; Directorate Identifier 2010–SW–021–AD.

Applicability: Model 206A, 206B, and 206B3 helicopters, with Litter Kit, part number 206–706–122 or 206–706–324, installed, certificated in any category.

Compliance: Within 6 months, unless accomplished previously.

To add an operating limitation when a litter kit is installed to prohibit flight, including hover, with the litter doorpost removed to prevent loss of structural integrity of the fuselage, do the following:

(a) Revise the Rotorcraft Flight Manual (RFM) by inserting into the Operating Limitations, Section 1, of the RFM the following statement: "Flight, including hover, with the litter doorpost removed is prohibited." This revision may be made by pen and ink changes, inserting a copy of this AD into the RFM, or inserting a copy of the RFM Supplement (RFMS) dealing with Litter Kits as follows: For Model 206A helicopters—inserting RFMS BHT–206A–FMS–8, dated December 30, 2009, into RFM BHT–206A–FM–1, dated July 2, 2009; for Model 206B helicopters—inserting RFMS BHT–206B–FMS–8, dated December 30, 2009, into RFM BHT–206B–FM–1, dated July 2, 2009; and for Model 206B3 helicopters—inserting RFMS BHT–206B3–FMS–2, dated December 30, 2009, into RFM BHT–206B3–FM–1, dated March 24, 2010.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, ATTN: Mark Wiley, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5134, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 5300: Fuselage structure (general).

Issued in Fort Worth, Texas, on January 31, 2011.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–11753 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3198; File No. S7–17–11]

RIN 3235–AK71

Investment Adviser Performance Compensation

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; notice of intent to issue order.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") intends to issue an order that would adjust two dollar amount tests in the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge performance based compensation to "qualified clients." The adjustments would revise the dollar amount tests to account for the effects of inflation. The Commission is also proposing to amend the rule to: provide that the Commission will issue an order every five years adjusting for inflation the dollar amount tests; exclude the value of a person's primary residence from the test of whether a person has sufficient net worth to be considered a "qualified client;" and add certain transition provisions to the rule.

DATES: Comments on the proposed rule should be received on or before July 11, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–17–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–17–11. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also 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; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Hearing Request: An order adjusting the dollar amount tests specified in the definition of "qualified client" will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Commission's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 2011. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

FOR FURTHER INFORMATION CONTACT: Adam B. Glazer, Senior Counsel, or C. Hunter Jones, Assistant Director, at 202–551–6792, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission intends to issue an order, and is proposing for public comment amendments to rule 205–3 [17 CFR 275.205–3], under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").[1]

Table of Contents

I. Background

Section 205(a)(1) of the Investment Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client.[2] Congress prohibited these compensation arrangements (also known as performance compensation or performance fees) in 1940 to protect advisory clients from arrangements it believed might encourage advisers to take undue risks with client funds to increase advisory fees.[3] In 1970, Congress provided an exception from the prohibition for advisory contracts relating to the investment of assets in excess of $1,000,000,[4] if an appropriate "fulcrum fee" is used.[5] Congress subsequently authorized the Commission to exempt any advisory contract from the performance fee prohibition if the contract is with persons that the Commission determines do not need the protections of that prohibition.[6]

The Commission adopted rule 205–3 in 1985 to exempt an investment adviser from the prohibition against charging a client performance fees in certain circumstances.[7] The rule, when adopted, allowed an adviser to charge performance fees if the client had at least $500,000 under management with the adviser immediately after entering into the advisory contract ("assets-under-management test") or if the adviser reasonably believed the client had a net worth of more than $1 million at the time the contract was entered into ("net worth test"). The Commission stated that these standards would limit the availability of the exemption to clients who are financially experienced and able to bear the risks of performance fee arrangements.[8]

In 1998, the Commission amended rule 205–3 to, among other things, change the dollar amounts of the assets-under-management test and net worth test to adjust for the effects of inflation since 1985.[9] The Commission revised the former from $500,000 to $750,000, and the latter from $1 million to $1.5 million.[10]

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[11] The Dodd-Frank Act, among other things, amended section 205(e) of the Advisers Act to state that, by July 21, 2011 and every five years thereafter, the Commission shall adjust for inflation the dollar amount tests included in rules issued under section 205(e).[12] Separately, the Dodd-Frank Act also required that we adjust the net worth standard for an "accredited investor" in rules under the Securities Act of 1933 ("Securities Act") [13] to exclude the value of a person's primary residence.[14]

II. Discussion

Pursuant to section 418 of the Dodd-Frank Act, today we are providing notice that the Commission intends to issue an order revising the dollar amount tests of rule 205–3 to account for the effects of inflation. We also are proposing for public comment amendments to rule 205–3 to provide that the Commission will subsequently

[1] 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to the Investment Advisers Act, and all references to rules under the Investment Advisers Act, including rule 205–3, are to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275].

[2] 15 U.S.C. 80b–5(a)(1).

[3] H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as "heads I win, tails you lose" arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. Rep No. 1775, 76th Cong., 3d Sess. 22 (1940).

[4] 15 U.S.C. 80b–5(b)(2). Trusts, governmental plans, collective trust funds, and separate accounts referred to in section 3(c)(11) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(11)] are not eligible for this exception from the performance fee prohibition under section 205(b)(2)(B) of the Advisers Act.

[5] 15 U.S.C. 80b–5(b). A fulcrum fee generally involves averaging the adviser's fee over a specified period and increasing or decreasing the fee proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices. *See* rule 205–2 under the Advisers Act; Definition of "Specified Period" Over Which Asset Value of Company or Fund Under Management is Averaged, Investment Advisers Act Release No. 347 (Nov. 10, 1972) [37 FR 24895 (Nov. 23, 1972)]. In 1980, Congress added another exception to the prohibition against charging performance fees, for contracts involving business development companies under certain conditions. *See* section 205(b)(3) of the Advisers Act.

[6] Section 205(e) of the Advisers Act. In 1996, Congress included in the National Securities Markets Improvement Act of 1996 ("1996 Act") two additional statutory exceptions from the performance fee prohibition and new section 205(e) of the Advisers Act. The 1996 Act added exceptions for contracts with companies excepted from the definition of "investment company" in the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a] by section 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(7)] and contracts with persons who are not residents of the United States. *See* sections 205(b)(4) and (b)(5). Section 205(e) of the Advisers Act authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition advisory contracts with persons that the Commission determines do not need its protections. Section 205(e) provides that the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as "financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205]."

[7] Exemption To Allow Registered Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 26, 1985)] ("1985 Adopting Release"). The exemption applies to the entrance into, performance, renewal, and extension of advisory contracts. *See* rule 205–3(a).

[8] *See* 1985 Adopting Release, *supra* note 7, at Sections I.C and II.B. The rule also imposed other conditions, including specific disclosure requirements and restrictions on calculation of performance fees. *See id.* at Sections II.C–E.

[9] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)] ("1998 Adopting Release").

[10] *See id.* at Section II.B.1.

[11] Pub. L. 111–203, 124 Stat. 1376 (2010).

[12] *See* section 418 of the Dodd-Frank Act (requiring the Commission to issue an order every five years revising dollar amount thresholds in a rule that exempts a person or transaction from section 205(a)(1) of the Advisers Act if the dollar amount threshold was a factor in the Commission's determination that the persons do not need the protections of that section).

[13] 15 U.S.C. 77a *et seq.*

[14] *See* section 413(a) of the Dodd-Frank Act.

issue orders making future inflation adjustments every five years.[15] In addition, we are proposing to amend rule 205–3 to exclude the value of a person's primary residence from the determination of whether a person meets the net worth standard required to qualify as a "qualified client." Finally, we propose to modify the transition provisions of the rule to take into account performance fee arrangements that were permissible when they were entered into, so that new dollar amount thresholds do not require investment advisers to renegotiate the terms of arrangements that were permissible when the parties entered into them. These proposals are discussed in more detail below.

A. Order Adjusting Dollar Amount Tests

We intend to issue an order revising the dollar amounts of the assets-under-management test and the net worth test in the definition of "qualified client" in rule 205–3. As discussed above, the Commission last revised these dollar amount tests in 1998 to take into account the effects of inflation. At that time, the Commission revised the assets-under-management test from $500,000 to $750,000 and revised the net worth test from $1 million to $1.5 million. Pursuant to section 418 of the Dodd-Frank Act, which requires that we revise the dollar amount thresholds of the rule by order not later than July 21, 2011, and every five years thereafter, today we are providing notice [16] that we intend to issue an order to revise the assets-under-management and net worth tests of rule 205–3 to $1 million [17] and $2 million respectively.[18]

These revised dollar amounts would take into account the effects of inflation by reference to the historic and current levels of the Personal Consumption Expenditures Chain-Type Price Index ("PCE Index"),[19] which is published by the Department of Commerce.[20] The PCE Index is often used as an indicator of inflation in the personal sector of the U.S. economy.[21] The Commission has used the PCE Index in other contexts, including the determination of whether a person meets a specific net worth minimum in Regulation R under the Securities Exchange Act of 1934 (15 U.S.C. 78a) ("Exchange Act").[22]

B. Proposed Amendments to Rule 205–3

1. Inflation Adjustment of Dollar Amount Thresholds

We also are proposing to amend rule 205–3 under the Advisers Act. We would add a new paragraph (e) stating that the Commission will issue an order every five years adjusting for inflation the dollar amounts of the assets-under-management and net worth tests of the rule, as required by the Dodd-Frank Act.[23] Our proposed amendment would specify that the PCE Index will be the inflation index used to calculate future inflation adjustments of the dollar amount tests in the rule.[24] We believe the use of the PCE Index is appropriate because, as discussed above, it is an indicator of inflation in the personal sector of the U.S. economy and is used in other provisions of the Federal securities laws.[25] We also intend to revise paragraph (d) of rule 205–3, which sets forth the assets-under-management and net worth tests, to reflect the revised thresholds that we establish by the order discussed

[15] Rule 205–3 is the only exemptive rule issued under section 205(e) of the Advisers Act that includes dollar amount tests, which are the assets-under-management and net worth tests.

[16] *See* section 211(c) of the Advisers Act (requiring the Commission to provide appropriate notice of and opportunity for hearing for orders issued under the Advisers Act).

[17] An investment adviser could include in determining the amount of assets under management the assets that a client is contractually obligated to invest in private funds managed by the adviser. Only bona fide contractual commitments may be included, *i.e.,* those that the adviser has a reasonable belief that the investor will be able to meet.

This approach to calculating assets under management conforms with the approach we took in our recent release proposing to implement certain exemptions from registration with the Commission under the Advisers Act. In that release, we proposed to include uncalled capital commitments in the calculation of assets under management used to determine whether an adviser qualifies for the private fund adviser exemption. *See* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3111 (Nov. 19, 2010) [75 FR 77190 (Dec. 10, 2010)] at nn.192–94 and accompanying text.

[18] As discussed further below, we also would revise the definition of "qualified client" in rule 205–3(d) to reflect the updated thresholds.

[19] The revised dollar amounts in the tests would reflect inflation as of the end of 2010, and are rounded to the nearest $100,000 as required by section 418 of the Dodd-Frank Act. The 2010 PCE Index is 111.123, and the 1997 PCE Index was 85.395. Assets-under-management test calculation to adjust for the effects of inflation: 111.123/85.395 × $750,000 = $975,962; $975,962 rounded to the nearest multiple of $100,000 = $1 million. Net worth test calculation to adjust for the effects of inflation: 111.123/85.395 × $1.5 million = $1,951,923; $1,951,923 rounded to the nearest multiple of $100,000 = $2 million.

[20] The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the Department of Commerce. *See http://www.bea.gov. See also http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=64&ViewSeries=NO&Java=no&Request3Place=N&3Place=N&FromView=YES&Freq=Year&FirstYear=1997&LastYear=2010&3Place=N&Update=Update&JavaBox=no#Mid.*

[21] *See* Clinton P. McCully, Brian C. Moyer, and Kenneth J. Stewart, "Comparing the Consumer Price Index and the Personal Consumption Expenditures Price Index," Survey of Current Business (Nov. 2007) at 26 n.1 (PCE Index measures changes in "prices paid for goods and services by the personal sector in the U.S. national income and product accounts" and is primarily used for macroeconomic analysis and forecasting). *See also* Federal Reserve Board, Monetary Policy Report to the Congress (Feb. 17, 2000) at n.1 (available at *http://www.federalreserve.gov/boarddocs/hh/2000/february/ReportSection1.htm#FN1*) (noting the reasons for using the PCE Index rather than the consumer price index).

[22] *See* Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] ("Regulation R Release") (adopting periodic inflation adjustments to the fixed-dollar thresholds for both "institutional customers" and "high net worth customers" under Rule 701 of Regulation R). *See also* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (increasing for inflation the threshold amount for prepayment of advisory fees that triggers an adviser's duty to provide clients with an audited balance sheet and the dollar threshold triggering the exception to the delivery of brochures to advisory clients receiving only impersonal advice). The Dodd-Frank Act also requires the use of the PCE Index to calculate inflation adjustments for the cash limit protection of each investor under the Securities Investor Protection Act of 1970. *See* section 929H(a) of the Dodd-Frank Act.

[23] Proposed rule 205–3(e) would provide that the Commission will issue an order effective on or about May 1, 2016 and approximately every five years thereafter adjusting the assets-under-management and net worth tests for the effects of inflation.

[24] Proposed rule 205–3(e) would provide that the assets-under-management and net worth tests will be adjusted for inflation by (i) dividing the year-end value of the PCE Index for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of the PCE Index for the calendar year 1997, (ii) multiplying the threshold amounts adopted in 1998 ($750,000 and $1.5 million) by that quotient, and (iii) rounding each product to the nearest multiple of $100,000. For example, for the order the Commission would issue in 2016, the Commission would (i) divide the 2015 PCE Index by the 1997 PCE Index, (ii) multiply the quotient by $750,000 and $1.5 million, and (iii) round each of the two products to the nearest $100,000.

[25] *See supra* notes 21–22 and accompanying text.

above.[26] Finally, we anticipate that, if we adopt these proposed amendments to rule 205–3, we would delegate to our staff the authority to issue inflation adjustment orders every five years in the future.[27]

We request comment on the proposed amendments to rule 205–3 concerning the adjustment of the dollar amount thresholds to account for inflation.

- Is the proposed use of the PCE Index as a measure of inflation appropriate? Is there another index or other measure that would be more appropriate?
- The rule would establish the dollar amount tests we adopted in 1998 as the baseline for all future adjustments, as a consistent denominator for all future calculations. Should we instead establish each future adjustment of the dollar amount tests as a new baseline for the next calculation of the dollar amount tests? If we were to adopt that approach, because the Dodd-Frank Act requires that revised thresholds be rounded to the nearest $100,000, could the establishment of new baselines at the rounded amounts, each time the thresholds are adjusted, result in the underestimation or overestimation of the effects of inflation in subsequent periods?

2. Exclusion of the Value of Primary Residence from Net Worth Determination

We also are proposing to amend the net worth standard in rule 205–3, in the definition of "qualified client," to exclude the value of a natural person's primary residence and debt secured by the property.[28] This change, although not required by the Dodd-Frank Act, is similar to that Act's requirement that we exclude the value of a natural person's primary residence in the definition of "accredited investor" in rules under the Securities Act.[29] The value of a person's residence may have little relevance to an individual's financial experience[30] and ability to bear the risks of performance fee arrangements, and therefore little relevance to the individual's need for the Act's protections from performance fee arrangements.[31] The Commission took a similar approach when it excluded the value of a person's primary residence and associated liabilities from the determination of whether a person is a "high net worth customer" in Regulation R under the Exchange Act[32] and from the determination of whether a natural person has a sufficient level of investments to be considered a "qualified purchaser" under the Investment Company Act.[33]

Our proposed amendment would exclude the value of a natural person's primary residence and the amount of debt secured by the property that is no greater than the property's current market value.[34] Therefore a mortgage on the residence would not be included in the assessment of a natural person's net worth, unless the outstanding debt on the mortgage, at the time that net worth is calculated, exceeds the market value of the residence. If the outstanding debt exceeds the market value of the residence, the amount of the excess would be considered a liability in calculating net worth under the proposed amendments to rule 205–3.

We request comment on the proposed exclusion of the value of a person's primary residence from the calculation of a natural person's net worth under rule 205–3.

- Should we, as proposed, exclude the value of a natural person's primary residence from the calculation of net worth? Or should we include the value of a person's primary residence? Does such ownership evidence financial experience and the ability to bear risks associated with performance fee contracts? Should we, as proposed, also exclude from the net worth standard in rule 205–3 debt secured by a person's primary residence, up to the market value of the residence? Does such debt affect the ability to bear risks associated with performance fee contracts or investments that often are associated with such contracts?
- We note that although the Dodd-Frank Act requires the Commission to exclude a natural person's primary residence from the net worth standard for an "accredited investor" in rules under the Securities Act, the Dodd-Frank Act does not require the Commission to exclude a natural person's primary residence from the standards for a "qualified client" in rules under section 205(e) of the Advisers Act. Instead, the Dodd-Frank Act requires that the dollar amount tests of "qualified client" be adjusted for inflation every five years. Should our amendment of rule 205–3 accomplish only what the Dodd-Frank Act mandates (*i.e.,* inflation-adjustment of the dollar amount tests) and not revise the net

[26] As discussed above, we would revise the assets-under-management test to $1 million and the net worth test to $2 million.

[27] To delegate this authority to the staff, we would amend our rules of organization and program management to delegate to the Director of the Division of Investment Management the authority to issue notices and orders revising the dollar amount thresholds in rule 205–3(d)(1)(i) (assets-under-management) and 205–3(d)(1)(ii)(A) (net worth) for the effects of inflation pursuant to amended section 205(e) of the Advisers Act every five years after 2011. *See* rule 30–5 of the Commission's Rules of Organization and Program Management [17 CFR 200.30–5] (delegating authority to the Director of the Division of Investment Management). We also anticipate that future changes to the dollar amount tests that are issued by order, will be reflected in technical amendments to rule 205–3(d).

[28] Proposed rule 205–3(d)(1)(ii)(A) (excluding from the assessment of net worth the value of a natural person's primary residence "calculated by subtracting from the estimated fair market value of the property the amount of debt secured by the property, up to the estimated fair market value of the property").

[29] *See* section 413(a) of the Dodd-Frank Act (requiring the Commission to adjust any net worth standard for an "accredited investor" as set forth in Commission rules under the Securities Act of 1933 to exclude the value of a natural person's primary residence). The Dodd-Frank Act does not require that the net worth standard for an accredited investor be adjusted periodically for the effects of inflation, although it does require the Commission at least every four years to "undertake a review of the definition, in its entirety, of the term 'accredited investor' * * * [as defined in Commission rules] as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy." *See* section 413(b)(2)(A) of the Dodd-Frank Act. In a separate release, we proposed rule amendments to adjust the net worth standards for accredited investors in our rules under the Securities Act. *See* Net Worth Standard for Accredited Investors, Securities Act Release No. 9177 (Jan. 25, 2011) [76 FR 5307 (Jan. 31, 2011)] ("Accredited Investor Proposing Release").

[30] We stated in 2006, when we proposed a minimum net worth threshold for establishing when an individual could invest in hedge funds pursuant to the safe harbor of Regulation D, that the value of an individual's personal residence may bear little or no relationship to that person's financial knowledge and sophistication. *See* Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles, Investment Advisers Act Release No. 2576 (Dec. 27, 2006) [72 FR 400 (Jan. 4, 2007)] at Section III.B.3.

[31] For example, an individual who meets the net worth test only by including the value of his primary residence in the calculation is unlikely to be as able to bear the risks of performance fee arrangements as an individual who meets the test without including the value of her primary residence.

[32] *See, e.g.,* Regulation R Release, *supra* note 22, at Section II.C.1 (excluding primary residence and associated liabilities from the fixed-dollar threshold for "high net worth customers" under Rule 701 of Regulation R, which permits a bank to pay an employee certain fees for the referral of a high net worth customer or institutional customer to a broker-dealer without requiring registration of the bank as a broker-dealer).

[33] A qualified purchaser under section 2(a)(51) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)] includes, among others, any natural person who owns not less than $5 million in investments, as defined by the Commission. Rule 2a51–1 under the Investment Company Act includes within the meaning of investments real estate held for investment purposes. 17 CFR 270.2a51–1(b)(2). A personal residence is not considered an investment under rule 2a51–1, although residential property may be treated as an investment if it is not treated as a residence for tax purposes. *See* Privately Offered Investment Companies, Investment Company Act Release No. 22597 (Apr. 3, 1997) [62 FR 17512 (Apr. 9, 1997)] at text accompanying and following n.48.

[34] Proposed rule 205–3(d)(1)(ii)(A).

worth test by excluding the value of a primary residence?

• Should the rule require, as proposed, that debt secured by the residence in excess of the market value of the residence at the time the advisory contract is entered into be included as a liability in the determination of the person's net worth? Should the rule instead require that all debt that is secured by the primary residence (regardless of whether it exceeds the fair market value of the residence) be excluded from the calculation of net worth under rule 205–3? Alternatively, should the rule exclude the entire market value of the residence from net worth, but require treatment of any associated debt as a liability? Should the rule require inclusion of debt secured by a primary residence as a liability if proceeds of the debt are used to enter into an advisory contract that involves performance compensation paid to an investment adviser? If so, how would these proceeds of the debt be traced?

• Should the rule provide that the calculation of net worth must be made on a specified date prior to the day the advisory contract is entered into, for example 30, 60, or 90 days? If not, would investors be likely to inflate their net worth by borrowing against their homes to attain qualified client status? If we were to require that the net worth calculation be made a significant period of time in advance of entering into the advisory contract, would such a requirement make the calculation unduly complex?

• Is the language of the proposed rule amendment sufficiently precise? Should we substitute the word "equity" for the word "value" when referring to the primary residence excluded from the calculation of a natural person's net worth? Should we define the term "primary residence" for purposes of rule 205–3? If so, should we address the circumstances of a person who lives in multiple residences for roughly equal amounts of time during the year? [35]

• As noted above, the Commission proposed in a separate release to adjust the net worth standards for accredited investors in our rules under the Securities Act, to exclude the value of a natural person's primary residence from the assessment of a natural person's net worth.[36] We request comment on whether the net worth standards that we consider in connection with rule 205–3 should differ from any standards we consider in connection with those proposed amendments.

3. Transition Rules

The proposed amendments would replace the current transition rules section of rule 205–3 with two new subsections to allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into, even if performance fees would not be permissible under the contract if it were entered into at a later date. These transition provisions, proposed rules 205–3(c)(1) and (2), are both designed so that restrictions on the charging of performance fees apply to new contractual arrangements and do not apply retroactively to existing contractual arrangements, including investments in companies that are excluded from the definition of an "investment company" under the Investment Company Act by reason of section 3(c)(1) [37] of that Act ("private investment companies").[38] This approach would minimize the disruption of existing contracts that meet applicable standards at the time the parties entered into the contract.

First, proposed rule 205–3(c)(1) would provide that, if a registered investment adviser entered into a contract and satisfied the conditions of the rule that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of the rule.[39] If, however, a natural person or company that was not a party to the contract becomes a party, the conditions of the rule in effect at the time they become a party would apply to that person or company. This proposed subsection would mean, for example, that if an individual meets the $1.5 million net worth test and enters into an advisory contract with a registered investment adviser, the client could continue to maintain funds (and invest additional funds) with the adviser under that contract even if the net worth test were subsequently raised and he or she no longer met the new test. If, however, another person were to become a party to that contract, the current net worth threshold would apply to the new party when he or she becomes a party to the contract.[40]

We request comment on this proposed transition provision.

• Should the rule be amended as proposed, to allow advisers to continue to provide advisory services under performance fee arrangements that were permitted under the rule in effect at the time the contract was entered into, if the client does not meet the eligibility criteria after an adjustment to the dollar amount tests or for any other reason (*e.g.,* a decrease in the client's net worth below the dollar amount test)? Should the rule in these circumstances permit the management of existing funds under previous contractual arrangements, but prohibit an adviser from charging performance fees with respect to funds committed after the effective date of the rule? If so, how should the rule treat dividends and realized capital gains reinvested by the adviser?

Second, proposed rule 205–3(c)(2) would provide that, if an investment adviser was previously exempt pursuant to section 203 from registration with the Commission and subsequently registers with the Commission, section 205(a)(1) of the Act would not apply to the contractual arrangements into which the adviser entered when it was exempt from registration with the

[35] As we stated in the Accredited Investor Proposing Release, supra note 29, at nn.35–36 and accompanying text, helpful guidance may be found in rules that apply in other contexts. For example, the IRS Publication 523, *Selling Your Home* 3–4 (Jan. 5, 2011) lists the following factors to be used, in addition to the amount of time a person lives in each of several homes, to determine a person's "principal residence" under section 121 of the Internal Revenue Code, 26 U.S.C. 121: place of employment; location of family members' main home; mailing address for bills and correspondence; address listed on Federal and state tax returns, driver's license, car registration, and voter registration card; location of banks used and recreational clubs and religious organizations.

[36] *See supra* note 29.

[37] *See* rule 205–3(d)(3) (defining "private investment company" for purposes of rule 205–3). Advisory contracts with companies excepted from the definition of an "investment company" by reason of section 3(c)(7) of the Investment Company Act are not subject to the Advisers Act performance fee prohibition. *See* section 205(b)(4) of the Advisers Act. Therefore these contractual arrangements do not need, and are not included within, the exemptive relief provided by rule 205–3.

[38] Under rule 205–3(b), the equity owner of a private investment company, or of a registered investment company or business development company, is considered a client of the adviser for purposes of rule 205–3(a). We adopted this provision in 1998, and the provision was not affected by our subsequent rule amendments and related litigation concerning the registration of investment advisers to private investment companies. *See* 1998 Adopting Release, *supra* note 9; *Goldstein* v. *Securities and Exchange Commission,* 451 F.3d 873 (D.C. Cir. 2006).

[39] Proposed rule 205–3(c)(1) would modify the existing transition rule in rule 205–3(c)(1), which permits advisers and their clients that entered into a contract before August 20, 1998, and satisfied the eligibility criteria in effect on the date the contract was entered into to maintain their existing performance fee arrangements.

[40] Proposed rule 205–3(c)(1). Similarly, a person who invests in a private investment company advised by a registered investment adviser must satisfy the rule's conditions when he or she becomes an investor in the company. *See* rule 205–3(b) (equity owner of a private investment company is considered a client of a registered investment adviser for purposes of rule 205–3(a)).

Commission.[41] This proposed subsection would mean, for example, that if an investment adviser to a private investment company with 50 individual investors was exempt from registration with the Commission in 2009, but then subsequently registered with the Commission because it was no longer exempt from registration or because it chose voluntarily to register, section 205(a)(1) would not apply to the contractual arrangements the adviser entered into before it registered, including the accounts of the 50 individual investors with the private investment company and any additional investments they make in that company. If, however, any other individuals become new investors in the private investment company after the adviser registers with the Commission, section 205(a)(1) would apply to the adviser's relationship with them.

We request comment on this proposed transition provision.

- Should the rule be amended as proposed, to allow advisers to continue to be compensated under performance fee arrangements that were permitted when the adviser was exempt from registration with the Commission? Should the rule in these circumstances permit the management of existing funds under previous contractual arrangements, but prohibit a newly registered investment adviser from charging a performance fee with respect to any additional funds to be managed under previously existing contracts?
- Should the rule differentiate between the reasons why an adviser was exempt from registration (*e.g.,* due to a particular subsection of the Advisers Act) but is no longer exempt? Should the rule include different transition provisions depending upon the reason why an adviser was exempt from registration but is no longer exempt?

C. Effective and Compliance Dates

We anticipate that, if we issue the order described above and adopt the rule amendments we are proposing, we will allow an appropriate time period before requiring compliance with the new standards. For rule amendments, the Administrative Procedure Act generally requires at least 30 days prior to the effectiveness of new rules, absent special circumstances.[42]

- We request comment on the transition period or delayed compliance date that would be appropriate for any revised thresholds that we issue by order, or for any rule amendments that we adopt. Should we allow more time than the 30 days required under the Administrative Procedure Act (*e.g.,* 60 days, 90 days, 120 days)?

III. Request for Comment

The Commission requests comment on the rule amendments we propose in this release. Commenters are requested to provide empirical data to support their views. The Commission also requests suggestions for additional changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this release.

IV. Cost Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of the proposed amendments, and we request comment on all aspects of this cost benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular investment advisers, including small advisers, as well as any other costs or benefits that may result from the adoption of these proposed amendments.

In proposing to amend rule 205–3 to provide that the Commission will issue orders every five years adjusting for inflation the dollar amount tests of the rule, we are responding to the Dodd-Frank Act's amendment of section 205(e) of the Advisers Act requiring the Commission to issue these orders.[43] The proposed amendments to rule 205–3 also would exclude the value of a natural person's primary residence and debt secured by the property from the determination of whether a person has sufficient net worth to be considered a "qualified client," and would modify the transition provisions of the rule to take into account performance fee arrangements that were permissible when they were entered into.

A. Benefits

We expect that adjusting the dollar amount thresholds in rule 205–3 for the effects of inflation would benefit advisory clients. When the Commission adopted the dollar amount thresholds in the definition of "qualified client" in rule 205–3 in 1985, it evaluated the most appropriate dollar amount for both the assets-under-management and net worth tests. The Commission stated that these standards would limit the availability of the exemption to clients who are financially experienced and able to bear the risks of performance fee arrangements.[44] The adjustment of these dollar amount tests every five years would carry forward these protections at dollar levels that are based on the current price levels in the economy. We believe that adjusting these eligibility criteria to reflect real dollar equivalents would help to preserve these protections.

The proposed exclusion of the value of an individual's primary residence also would benefit clients. As discussed above, the value of an individual's primary residence may bear little or no relationship to that person's financial experience or ability to bear the risks associated with performance fee arrangements. Therefore, a client who does not meet the net worth test of rule 205–3 without including the value of her primary residence would be protected by the performance fee restrictions in section 205 of the Advisers Act.[45]

The proposed amendments to the rule's transition provisions would benefit advisory clients and investment advisers. The proposed amendments would allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into, even if performance fees would not be permissible under the contract if it were entered into at a later date. These transition provisions are

[41] Section 205(a)(1) would apply, however, to contractual arrangements into which the adviser enters after it is no longer exempt from registration with the Commission. *See* proposed rule 205–3(c)(2). The approach of the proposed subsection is similar to the transition subsections we adopted in 2004, in rules 205–3(c)(2)—(3), when we adopted rules to require the registration of investment advisers to private funds. *See* Registration Under the Advisers Act of Certain Hedge Fund Advisers, Investment Advisers Act Release No. 2333 (Dec. 2, 2004) [69 FR 72054 (Dec. 10, 2004)]. Those transition provisions were vacated by the U.S. Court of Appeals for the District of Columbia Circuit when it vacated the Commission's rulemaking in its entirety. *See Goldstein* v. *SEC, supr*a note 38.

[42] *See* 5 U.S.C. 553(d).

[43] Section 418 of the Dodd-Frank Act.

[44] *See supra* note 8 and accompanying text.

[45] As discussed above, the proposed amendments to rule 205–3 also would exclude from the net worth test the amount of debt secured by the primary residence that is no greater than the property's current market value. The exclusion of the debt might limit these benefits in some circumstances. For example, if a client meets the net worth test as a result of the exclusion of debt secured by the primary residence and the market value of the primary residence were to decline to the extent that the debt could not be satisfied by the sale of the residence, the client might be less able to bear the risks related to the performance fee contract and the investments that the adviser might make on behalf of the client.

designed so that the restrictions on the charging of performance fees apply to new contractual arrangements and do not apply retroactively to existing contractual arrangements, including investments in private investment companies. Otherwise, advisory clients and investment advisers might have to terminate contractual arrangements into which they previously entered and enter into new arrangements, which could be costly to investors and advisers.

- We request comment on these anticipated benefits, and on whether the proposed rule amendments would result in additional benefits to advisory clients and investment advisers.

B. Costs

We do not expect that adjusting the dollar amount tests in rule 205–3 would impose significant new costs on advisory clients or investment advisers. As discussed above, section 418 of the Dodd-Frank Act requires the Commission to periodically issue orders adjusting for inflation the assets-under-management and net worth tests in rule 205–3. Raising these eligibility criteria could mean that certain persons who would have qualified under the current dollar amount thresholds would no longer qualify under the dollar amount thresholds as adjusted for the effects of inflation. As a result, an investment adviser could be prohibited from charging performance fees to new clients to whom it could have charged performance fees if the advisory contract had been entered into before the adjustment of the dollar amount thresholds. This effect may result in an investment adviser declining to provide services to potential clients.[46] However, this cost is a consequence of the Dodd-Frank Act, and therefore we do not attribute this cost to this rulemaking.

Section 418 of the Dodd-Frank Act does not specify how the Commission should measure inflation. We have proposed to use the PCE Index because it is widely used as a broad indicator of inflation in the economy and because the Commission has used the PCE Index in other contexts. It is possible that the use of the PCE Index to measure inflation might result in a larger or smaller dollar amount for the two thresholds than the use of a different index, although the rounding required by the Dodd-Frank Act (to the nearest $100,000) would likely negate any difference between indexes.

The proposed amendments to the rule's transition provisions are not likely to impose any new costs on advisory clients or investment advisers. As discussed above, the proposed amendments would allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into, even if performance fees would not be permissible under the contract if it were entered into at a later date.

The proposed amendments also would exclude the value of a person's primary residence and debt secured by the property (if no greater than the current market value of the residence) from the calculation of a person's net worth. Based on data from the Federal Reserve Board, approximately 5.5 million households have a net worth of more than $2 million including the equity in the primary residence (*i.e.,* value minus debt secured by the property), and approximately 4.2 million households have a net worth of more than $2 million excluding the equity in the primary residence.[47] Therefore, approximately 1.3 million households currently would not meet a $2 million net worth test under the proposed revised test, and would therefore not be considered "qualified clients," if the value of the primary residence is excluded from the test. Excluding the value of the primary residence (and debt secured by the property up to the current market value of the residence) would mean that 1.3 million households that would have met the net worth threshold if the value of the residence were included, as is currently permitted, would no longer be "qualified clients" under the proposed revised net worth test and therefore would be unable to enter into performance fee contracts unless they meet another test of rule 205–3.[48]

As noted above, the proposed amendments would allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into. For purposes of this cost benefit analysis, Commission staff assumes that 25 percent of the 1.3 million households would have entered into new advisory contracts that contained performance fee arrangements after the compliance date of the amendments, and therefore approximately 325,000 clients would not meet the revised net worth test.[49] Commission staff estimates that about 40 percent of those 325,000 potential clients (i.e., 130,000) would separately meet the "qualified client" definition under the assets-under-management test, and therefore could enter into performance fee arrangements.[50] The remaining 60 percent (195,000 households) would have access only to those investment advisers (directly or through the private investment companies they manage) that charge advisory fees other than performance fees.[51] Commission staff anticipates that the non-performance fee arrangements into which these clients would enter would contain management fees that yield advisers approximately the same amount of fees that clients would have paid under performance fee arrangements. Under these arrangements, if the adviser's performance does not reach the level at which it would have accrued performance fees, a client might end up paying higher overall fees than if he were paying performance fees. For purposes of this cost benefit analysis, Commission staff assumes that approximately 80 percent of the 195,000 households (*i.e.* 156,000 households) would enter into these non-performance fee arrangements, and that the other 20 percent would decide not to invest their assets with an adviser.[52]

[46] As discussed above, the proposed amendments would allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into, even if performance fees would not be permissible under the contract if it were entered into at a later date. *See supra* Section II.B.3.

[47] These figures are derived from the 2007 Federal Reserve Board Survey of Consumer Finances. These figures represent the net worth of households rather than individual persons who might be clients. More information regarding the survey may be obtained at *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

[48] The net worth test includes assets that a natural person holds jointly with his or her spouse. *See* rule 205–3(d)(1)(ii)(A).

[49] The assumption that 25% of these investors would have entered into new performance fee arrangements is based on data compiled in a 2008 report sponsored by the Commission. *See* Angela A. Hung et al., Investor and Industry Perspectives on Investment Advisers and Broker-Dealers 130 (Table C.1) (2008) (available at *http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf*) (estimating that approximately 20% of investment advisers charge performance fees). Although that report indicated that 20% of investment advisers charge performance fees and an average of only 37% of investors indicated they would seek investment advisory services in the next five years, *id.* at 105 (Table 6.13), we have used the 25% assumption in an effort to overestimate rather than underestimate the costs, especially given the inherent uncertainty surrounding hypothetical events. As noted above, the estimate concerning 1.3 million households is derived from the 2007 Federal Reserve Board Survey of Consumer Finances. *See supra* notes 47–48 and accompanying text.

[50] This estimate is based on data filed by registered investment advisers on Form ADV.

[51] Commission staff estimates that less than one percent of registered investment advisers are compensated solely by performance fees, based on data from filings by registered investment advisers on Form ADV.

[52] This assumption is based on the idea that a substantial majority of investment advisers that

Continued

Commission staff estimates that the remaining 39,000 households that would have entered into advisory contracts, if the value of the client's primary residence were not excluded from the calculation of a person's net worth, will not enter into advisory contracts. Some of these households would likely seek other investment opportunities, for example, investing in mutual funds, closed-end funds, or exchange-traded funds. Other households may forgo professional investment management altogether because of the higher value they place on the alignment of advisers' interests with their own interests associated with the use of performance fee arrangements.

We recognize that the proposed amendments that would exclude the value of a person's primary residence from the calculation of a person's net worth also might result in a reduction in the total fees collected by investment advisers. Because advisers would no longer be able to charge some clients performance fees, it is possible that the overall fees collected by advisers might be reduced. As discussed above, advisers may adjust their fees in order to obtain the same revenue from clients who do not meet the definition of "qualified clients." In addition, advisers may choose to market their services to a larger number of potential clients and thereby enter into advisory contracts with others to whom they could charge performance fees.[53] As a result, Commission staff estimates that the proposed amendments are not likely to impose a significant net cost on advisers. Because of the ability of investment advisers to attract qualified clients who satisfy the proposed standards, and the ability of non-qualified clients to invest in other investment opportunities that do not entail performance fees, we expect that the proposed rule would not have a significant impact on capital formation.[54]

We request comment on the economic costs of excluding the value of the primary residence and debt secured by the property from the net worth test for determining whether individual clients are "qualified clients."

- Would most households that no longer meet the net worth standard due to the exclusion of the value of the primary residence, still receive advisory services? Would investment advisers decline to provide advisory services to potential clients who do not qualify as "qualified clients"? Would investment advisers be able to offset the potential lost performance fees? If not, what would be the amount of lost fees that advisers would incur?

C. Request for Comment

The Commission requests comment on all aspects of the cost benefit analysis, including the accuracy of the potential benefits and costs identified and assessed in this release, as well as any other benefits or costs that may result from the proposals. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or additional benefits and costs. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[55] the Commission also requests information regarding the potential annual effect of the proposals on the U.S. economy. Commenters are requested to provide empirical data to support their views.

V. Paperwork Reduction Act

The proposed amendments to rule 205–3 under the Advisers Act do not contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[56] Accordingly, the PRA is not applicable.

VI. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980[57] ("RFA") requires the Commission to undertake an initial regulatory flexibility analysis ("IRFA") of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[58] Pursuant to 5 U.S.C. section 605(b), the Commission hereby certifies that the proposed amendments to rule 205–3 under the Advisers Act, would not, if adopted, have a significant economic impact on a substantial number of small entities. Under Commission rules, for purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[59]

Based on information in filings submitted to the Commission, 617 of the approximately 11,888 investment advisers registered with the Commission are small entities. Only approximately 20 percent of the 617 registered investment advisers that are small entities (about 122 advisers) charge any of their clients performance fees. In addition, 24 of the 122 advisers require an initial investment from their clients that would meet the current assets-under-management threshold ($750,000), which advisory contracts would be grandfathered into the exemption provided by rule 205–3 under the proposed amendments. Therefore, if these advisers in the future raise those minimum investment levels to the revised level that we intend to issue by order ($1 million), those advisers could charge their clients performance fees because the clients would meet the assets-under-management test, even if they would not meet the proposed net worth test that would exclude the value of the client's primary residence. For these reasons, the Commission believes that the proposed amendments to rule 205–3 would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission requests written comments regarding this certification. The Commission solicits comments as

typically charge performance fees and that in the future would calculate a potential client's net worth and determine that it does not meet the $2 million threshold, would offer alternate compensation arrangements in order to offer their services. As noted above, Commission staff estimates that less than one percent of registered advisers charge performance fees exclusively. *See supra* note 51.

[53] Commission staff notes that expanding marketing efforts could result in additional costs that offset some of the new sources of revenue. As noted above, Commission staff estimates that 39,000 households that would have entered into advisory contracts would not enter into such contracts as a result of the proposed exclusion of a client's primary residence from a determination of a client's net worth. Based on ADV filings, Commission staff estimates that 3295 registered advisers charge performance fees. Therefore, Commission staff estimates that on average each adviser would need to offset the loss of approximately 12 households (39,000/3295 = 11.8 households) to avoid a reduction in total fees collected, either by charging those households comparable fees other than performance fees, or by attracting other clients that meet the net worth test.

[54] Clients who no longer meet the net worth test as a result of the exclusion of their primary residence likely would have invested a smaller amount of assets than other clients who continue to meet the test. Therefore, the revenue loss to investment advisers from the exclusion of these clients from the performance fee exemption may be mitigated.

[55] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

[56] 44 U.S.C. 3501–3521.

[57] 5 U.S.C. 603(a).

[58] 5 U.S.C. 605(b).

[59] Rule 0–7(a).

to whether the proposed amendments could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VII. Statutory Authority

The Commission is proposing amendments to rule 205–3 pursuant to the authority set forth in section 205(e) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–5(e)].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The general authority citation for part 275 continues to read as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.205–3 is amended by:

a. Revising paragraph (c);

b. Revising paragraphs (d)(1)(i) and (ii); and

c. Adding paragraph (e).

The revisions and addition read as follows.

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.

* * * * *

(c) *Transition rules.* (1) *Registered investment advisers.* If a registered investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; *Provided,* however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company.

(2) *Registered investment advisers that were previously exempt from registration.* If an investment adviser was exempt from registration with the Commission pursuant to section 203 of the Act (15 U.S.C. 80b-3), section 205(a)(1) of the Act will not apply to an advisory contract entered into when the adviser was exempt, or to an account of an equity owner of a private investment company advised by the adviser if the account was established when the adviser was exempt; *Provided,* however, that section 205(a)(1) of the Act will apply with regard to a natural person or company who was not a party to the contract and becomes a party (including an equity owner of a private investment company advised by the adviser) when the adviser is no longer exempt.

(d) * * *

(1) * * *

(i) A natural person who, or a company that, immediately after entering into the contract has at least $1,000,000 under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $2,000,000, excluding the value of the primary residence of such natural person, calculated by subtracting from the estimated fair market value of the property the amount of debt secured by the property, up to the estimated fair market value of the property; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)(A)) at the time the contract is entered into; or

* * * * *

(e) *Inflation adjustments.* Pursuant to section 205(e) of the Act, the dollar amounts specified in paragraphs (d)(1)(i) and (d)(1)(ii)(A) of this section shall be adjusted by order of the Commission, effective on or about May 1, 2016 and issued approximately every five years thereafter. The adjusted dollar amounts established in such orders shall be computed by:

(1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year 1997;

(2) For the dollar amount in paragraph (d)(1)(i) of this section, multiplying $750,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of $100,000; and

(3) For the dollar amount in paragraph (d)(1)(ii)(A) of this section, multiplying $1,500,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of $100,000.

By the Commission.

Dated: May 10, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11801 Filed 5–12–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0303]

RIN 1625–AA00

Safety Zone; Shore Thing and Independence Day Fireworks, Chesapeake Bay, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the Chesapeake Bay in the vicinity of Ocean View Beach Park, Norfolk, VA in support of the Shore Thing and Independence Day Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Shore Thing and Independence Day Fireworks show. This action is intended to restrict vessel traffic movement on the Chesapeake Bay to protect mariners from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before June 13, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0303 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

To avoid duplication, please use only one of these four methods. See the

"Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Michael DiPace, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Michael.S.DiPace@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0303), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0303" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0303" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Michael S. DiPace at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

On July 1, 2011, Norfolk Festevents Ltd. will sponsor a fireworks display on the Chesapeake Bay at position 36°57′17″ N/076°15′00″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Chesapeake Bay within 210 feet of the fireworks display will be temporarily restricted.

Discussion of Proposed Rule

The Coast Guard proposes establishing a temporary safety zone on specified waters of the Chesapeake Bay in the vicinity of Ocean View Beach Park, Norfolk, Virginia. This safety zone will encompass all navigable waters within 210 feet of the fireworks display located at position 36°57′17″ N/076°15′00″ W (NAD 1983). This regulated area will be established in the interest of public safety during the Shore Thing and Independence Day Fireworks event and will be enforced from 9 p.m. to 10 p.m. on July 1, 2011, with a rain date of 9 p.m. to 10 p.m. on July 2, 2011. Access to the safety zone will be restricted during the specified dates and times. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities.

The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration, it is limited in size, and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Chesapeake Bay from 9 p.m. to 10 p.m. on July 1, 2011 or July 2, 2011.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Michael DiPace, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Michael.S.DiPace@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone around a fireworks display. The fireworks will be launched from land and the safety zone is intended to keep mariners away from any fall out or debris that may enter the water. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0303 to read as follows:

165.T05–0303 Safety Zone; Shore Thing and Independence Day Fireworks, Chesapeake Bay, Norfolk, VA

(a) *Regulated area.* The following area is a safety zone: specified waters of the Chesapeake Bay located within a 210 foot radius of the fireworks display at approximate position 36°57′17″ N/ 076°15′00″ W (NAD 1983) in the vicinity of Ocean View Beach Park, Norfolk, VA.

(b) *Definition.* For the purposes of this part, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement period.* This regulation is effective and will be enforced from 9 p.m. to 10 p.m. on July 1, 2011, with a rain date from 9 p.m. until 10 p.m. on July 2, 2011.

Dated: April 26, 2011.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2011–11805 Filed 5–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0304]

RIN 1625–AA00

Safety Zone; Cape Charles Fireworks, Cape Charles Harbor, Cape Charles, VA.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of Cape Charles City Harbor in Cape Charles, VA in support of the Fourth of July Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Cape Charles Fireworks show. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before June 13, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0304 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail If you have questions on this temporary rule, call or e-mail LT Michael DiPace, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Michael.S.DiPace@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0304), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0304" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider

all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0304" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Michael S. DiPace at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

On July 3, 2011 the Town of Cape Charles will sponsor a fireworks display on the shoreline of the navigable waters of Cape Charles City Harbor centered on position 37°15′46.5″ N/076°01′30″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 420 feet of the fireworks launch site.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on specified waters of the Cape Charles City Harbor within the area bounded by a 420-foot radius circle centered on position 37°15′46.5″ N/076°01′30″ W (NAD 1983). This safety zone will be established in the vicinity of Cape Charles, VA from 9 p.m. to 10 p.m. on July 3, 2011, with a rain date of July 4, 2011 from 9 p.m. until 10 p.m. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration, it is limited in size, and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of Cape Charles Harbor from 9 p.m. to 10 p.m. on July 3, 2011, with a rain date of July 4, 2011 from 9 p.m. until 10 p.m.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Michael DiPace, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Michael.S.DiPace@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone around a fireworks display. The fireworks are launched from land and the safety zone is intended to keep mariners away from any debris that may enter the water. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0304 to read as follows:

165.T05–0304 Safety Zone; Cape Charles Fireworks, Cape Charles Harbor, Cape Charles, VA.

(a) *Regulated area.* The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of Cape Charles Harbor in Cape Charles, VA and within 420 feet of position 37°15′46.5″ N/ 076°01′30″ W (NAD 1983).

(b) *Definition.* For the purposes of this part, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement period.* This regulation will be enforced from 9 p.m. until 10 p.m. on July 3, 2011, with a rain date of July 4, 2011 from 9 p.m. until 10 p.m.

Dated: April 26, 2011.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2011–11808 Filed 5–12–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0999; FRL–9304–9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Indiana Department of Environmental Management on November 24, 2010 to revise the Indiana State Implementation Plan (SIP). The submission revises the Indiana Administrative Code (IAC) by amending and updating the definition of "References to the Code of Federal Regulations," to refer to the 2009 edition. The submission revision also makes a minor revision to the definition of "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" by deleting an outdated **Federal Register** citation.

DATES: Comments must be received on or before June 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0999 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 3, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–11724 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0289, FRL–9305–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Delaware State Implementation Plan (SIP) submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) on September 25, 2008 that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require states to prevent any future, and remedy any existing, anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing to determine that the Regional Haze plan submitted by Delaware satisfies the requirements of the CAA. EPA is taking this action pursuant to those provisions of the CAA. EPA is also proposing to approve this revision as meeting the requirements of 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.

DATES: Comments must be received on or before June 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0289 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0289, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0289. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814–2037, or by e-mail at *mailto:lewis.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 25, 2008, the Delaware Department of Natural Resources and Environmental Control submitted a revision to its SIP to address Regional Haze for the first implementation period.

Table of Contents

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the "Interagency Monitoring of Protected Visual Environments" (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [1] in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers or about one-fifth of the visual range that would exist under estimated natural conditions (64 FR 35714, July 1, 1999).

B. Background Information

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [2] which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment" (45 FR 80084). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section II of this notice. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[3] Section 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Mid-Atlantic Region Air Management Association (MARAMA), the Northeast States for Coordination Air Use Management (NESCAUM), and the Ozone Transport Commission (OTC) established the Mid-Atlantic/Northeast Visibility Union (MANE–VU) regional planning organization. MANE–VU is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Mid-Atlantic and Northeast corridor of the United States. Member States and tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont.

D. Interstate Transport for Visibility

Sections 110(a)(1) and 110(a)(2)(D)(i)(II) of the CAA require that within three years of promulgation of a National Ambient Air Quality Standard (NAAQS), a State must ensure that its SIP, among other requirements, "contains adequate provisions prohibiting any source or other types of emission activity within the State from emitting any air pollutant in amounts which will interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility." Similarly, section 110(a)(2)(J) requires that such SIP "meet the applicable requirements of part C of (Subchapter I) (relating to visibility protection)."

EPA's 2006 Guidance, entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," recognized the possibility that a state could potentially meet the visibility portions of section 110(a)(2)(D)(i)(II) through its submission of a Regional Haze SIP, as required by sections 169A and 169B of the CAA. EPA's 2009 guidance, entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)," recommended that a state could meet such visibility requirements through its Regional Haze SIP. EPA's rationale supporting this recommendation was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The common understanding was that, as a result of this collaborative environment, each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the Regional Haze Rule. This interpretation is consistent with the requirement in the Regional Haze Rule that a state participating in a regional planning process must include "all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process." 40 CFR 51.308(d)(3)(ii).

The regional haze program, as reflected in the Regional Haze Rule, recognizes the importance of addressing the long-range transport of pollutants for visibility and encourages states to work together to develop plans to address haze. The regulations explicitly require each state to address its "share" of the emission reductions needed to meet the reasonable progress goals for neighboring Class I areas. States working together through a regional planning process, are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii). Given these requirements, appropriate regional haze SIPs will contain measures that will achieve these emissions reductions and will meet the applicable visibility related requirements of section 110(a)(2).

As a result of the regional planning efforts in the MANE–VU, all states in the MANE–VU region contributed information to a Technical Support System (TSS) which provides an analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The MANE–VU States consulted in the development of reasonable progress goals, using the products of this technical consultation process to co-develop their reasonable progress goals for the MANE–VU Class I areas. The modeling done by MANE–VU relied on assumptions regarding emissions over the relevant planning period and embedded in these assumptions were anticipated emissions reductions in each of the states in MANE–VU, including reductions from BART and other measures to be adopted as part of the State's long term strategy for addressing regional haze. The reasonable progress goals in the regional haze SIPs that have been prepared by

[3] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

the states in the MANE–VU region are based, in part, on the emissions reductions from nearby states that were agreed on through the MANE–VU process.

Delaware submitted a Regional Haze SIP on September 25, 2008, to address the requirements of the Regional Haze Rule. On December 13, 2007, Delaware submitted its original 1997 Ozone and $PM_{2.5}$ NAAQS infrastructure SIP. On September 16, 2009, Delaware submitted a 1997 Ozone and $PM_{2.5}$ NAAQS infrastructure submittal amendment and an infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS. On the September 16, 2009 submittal, Delaware indicated that its Regional Haze SIP would meet the requirements of the CAA, section 110(a)(2)(D)(i)(II), regarding visibility for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. Delaware also indicated it will meet the visibility requirements of 110(a)(2)(J), and specifically references the Regional Haze SIP submitted on September. EPA has reviewed Delaware's Regional Haze SIP and, as explained in section IV of this action, proposes to find that Delaware's Regional Haze submittal meets the portions of the requirements of the CAA sections 110(a)(2) relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

II. What are the requirements for the regional haze SIPs?

A. The CAA and the Regional Haze Rule (RHR)

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[4]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure "reasonable progress" toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired ("best") and 20 percent most impaired ("worst") visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as "EPA's 2003 Natural Visibility Guidance") and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as "EPA's 2003 Tracking Progress Guidance").

For the first regional haze SIPs that were due by December 17, 2007, "baseline visibility conditions" were the starting points for assessing "current" visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then-current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the "best" and one for the "worst" days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for "reasonable progress" toward achieving natural (i.e., "background") visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR

[4] The preamble to the RHR provides additional details about the deciview (64 FR 35714, 35725, July 1, 1999).

51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,* ("EPA's Reasonable Progress Guidance"), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the "uniform rate of progress" or the "glidepath") and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas ("Class I state") must also consult with potentially "contributing states," i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I state's areas. 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [5] built between 1962 and 1977 procure, install, and operate the "Best Available Retrofit Technology" as determined by the state. Under the RHR, states are directed to conduct BART determinations for such "BART-eligible" sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the "BART Guidelines") to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as "BART eligible sources" in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. CAA section 169(g)(4)). 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for the Clean Air Interstate Rule (CAIR) (70 FR 39104, July 6, 2005). EPA's regulations provide that states participating in the CAIR cap and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97, do not require affected BART eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X (40 CFR 51.308(e)(4)). Since CAIR is not applicable to emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include "enforceable emissions limitations, compliance

[5] The set of "major stationary sources" potentially subject to BART is listed in CAA section 169A(g)(7).

schedules, and other measures as necessary to achieve the reasonable progress goals" for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address Reasonably Attributable Visibility Impairment; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through "participation" in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. What is EPA's analysis of Delaware's regional haze submittal?

On September 25, 2008, the Delaware DNREC submitted revisions to the Delaware SIP to address regional haze as required by EPA's RHR.

A. Affected Class I Areas

Delaware has no Class I areas within its borders, but has been identified as influencing the visibility impairment of the Brigantine National Wildlife Refuge

Class I area, located in the State of New Jersey. Delaware is responsible for developing a regional haze SIP that addresses this Class I area, that describes its long-term emission strategy, its role in the consultation processes, and how the SIP meets the other requirements in EPA's regional haze regulations. However, since Delaware has no Class I areas within its borders, Delaware is not required to address the following Regional Haze SIP elements: (a) Calculation of baseline and natural visibility conditions, (b) establishment of reasonable progress goals, (c) monitoring requirements, and (d) RAVI requirements.

B. Long-Term Strategy/Strategies

As described in Section II.E of this action, the LTS is a compilation of state-specific control measures relied on by the state to obtain its share of emission reductions to support the RPGs established by New Jersey, the Class I area state. Delaware's LTS for the first implementation period addresses the emissions reductions from federal, State, and local controls that take effect in the State from the baseline period starting in 2002 until 2018. Delaware participated in the MANE–VU regional strategy development process. As a participant, Delaware supported a regional approach towards deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports: (a) Contributions to Regional Haze in the Northeast and Mid-Atlantic United States; (b) Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas; (c) Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations; and (d) Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities.

The LTS was developed by Delaware, in coordination with MANE–VU, identifying the emissions units within Delaware that likely have the largest impacts currently on visibility at the Brigantine National Wildlife Refuge Class I area, estimating emissions reductions for 2018, based on all controls required under federal and State regulations for the 2002–2018 period (including BART), and comparing projected visibility improvement with the uniform rate of progress for the Brigantine National Wildlife Refuge Class I area.

Delaware's LTS includes measures needed to achieve its share of emissions reductions agreed upon through the consultation process with New Jersey and includes enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established by New Jersey for the Brigantine National Wildlife Refuge Class I area.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by MARAMA for MANE–VU with assistance from Delaware. The 2018 emissions inventory was developed by projecting 2002 emissions, and assuming emissions growth due to projected increases in economic activity as well as applying reductions expected from federal and State regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM_{10}, $PM_{2.5}$, and SO_2. The BART guidelines direct States to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in Section III.B.3, below. MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. It was also determined that the total ammonia emissions in the MANE–VU region are extremely small. In addition, since VOC emissions are aggressively controlled through the Delaware SIP, the pollutants Delaware considered under BART are NO_X, PM_{10}, $PM_{2.5}$, and SO_2.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources, (2) area sources, (3) off-road mobile sources, and (4) on-road mobile sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Off-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types emissions are summed on the county level.

There are many federal and State control programs being implemented that MANE–VU and Delaware anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs were projected to achieve substantial visibility improvement by 2018 in the Brigantine National Wildlife Refuge. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress goals MANE–VU developed 2018 emissions projections called Best and Final. The emissions inventory provided by the State of Delaware for the Best and Final 2018 projections is based on adopted and enforceable requirements.

The ongoing air pollution control programs relied upon by Delaware for the Best and Final projections include Delaware's Regulation 1144—Control of Stationary Generator Emissions; Regulation 1146—Electric Generating Unit Multi-Pollutant Regulation; Regulation 1148—Control of Stationary Combustion Turbine Electric Generating Unit Emissions; Regulation 1142, Section 1—Control of NO_X Emissions from Industrial Boilers; Regulation 1142, Section 2—Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries; Regulation 1124, Section 46—Crude Oil Lightering Operations; a Valero Refinery consent decree; the NO_X SIP Call; NO_X and/or VOC reductions from the control rules in the 1-hour and 8-hour ozone SIPs for Delaware; NO_X OTC 2001 Model Rule for Industrial, Commercial, and Institutional (ICI) Boilers; Federal 2007 heavy duty diesel engine standards for non-road trucks and buses; Federal Tier 2 tailpipe controls for the on-road vehicles; Federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. The estimated emissions reductions resulting from Delaware's EGU Regulations 1144, 1146, and 1148 are 75% for SO_2 and 57% for NO_X from 2002 base year.

Delaware also relied on emission reductions from various federal Maximum Achievable Control Technology (MACT) rules in the development of the 2018 emission inventory projections. These MACT rules include the combustion turbine and reciprocating internal combustion engines MACT, the industrial boiler and process heaters MACT and the 2-, 4-, 7-, and 10-year MACT standards.

On July 30, 2007, the U.S. District Court of Appeals mandated the vacatur

and remand of the Industrial Boiler MACT Rule.[6] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). Delaware's modeling included emission reductions from the vacated Industrial Boiler MACT rule. Delaware did not redo its modeling analysis when the rule was re-issued. However, the expected reductions in SO_2 and PM are small relative to the Delaware inventory. Therefore, EPA finds the expected reductions of the new rule acceptable since the final rule requires compliance by 2014, it provides Delaware time to assure the required controls are in place prior to the end of the first implementation period in 2018. In addition, the RHR requires that any resulting differences between emissions projections and actual emissions reductions that may occur will be addressed during the five-year review prior to the next 2018 regional haze SIP.

Tables 1 and 2 are summaries of the 2002 baseline and 2018 estimated emissions inventories for Delaware. The 2018 estimated emissions include emission growth as well as emission reductions due to ongoing emission control strategies, BART, and reasonable progress goals.

TABLE 1—2002 EMISSION INVENTORY SUMMARY FOR DELAWARE IN TONS PER YEAR

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	4,755	16,345	3,666	4,217	196	73,744
Area	15,519	2,608	3,204	13,039	13,279	1,588
On-Road Mobile	10,564	21,341	415	581	903	584
Off-Road Mobile	8,010	16,227	926	1,021	5	3,983
Biogenic	46,343	990	0	0	0	0
Total	85,191	57,511	8,211	18,858	14,383	79,899

TABLE 2—2018 EMISSION SUMMARY FOR DELAWARE "BEST AND FINAL" IN TONS PER YEAR

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	2,104	16,587	3,692	4,437	210	16,707
Area	13,066	3,014	3,073	10,500	13,342	380
On-Road Mobile	5,037	5,917	191	202	1,328	128
Off-Road Mobile	5,652	14,631	808	896	6	3,296
Biogenic	46,343	990	0	0	0	0
Total	72,202	41,139	7,764	16,035	14,886	20,511

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze LTS for the 11 Mid-Atlantic and Northeast states and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

• *Meteorological Model:* The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5,}$ and regional haze regulatory modeling studies.

• *Emissions Model:* The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.

• *Air Quality Model:* The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.

• *Air Quality Model:* The Regional Model for Aerosols and Deposition (REMSAD), version 8, is a Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern U.S. via the species-tagging scheme.

• *Air Quality Model:* The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual states' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12x12 kilometer (km) cells that covers the 11 MANE–VU states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf, (EPA-454/B-07-002),*

[6] *NRDC* v. *EPA,* 489 F.3d 1250.

April 2007, and EPA document, Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html, EPA-454/R-05-001, August 2005, updated November 2005 ("EPA's Modeling Guidance").*

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the State of Delaware provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glidepath and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA accepts the MANE–VU technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Delaware LTS and regional haze SIP.

3. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment, demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region. Sulfate particles commonly account for more than 50 percent of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as or more than 80 percent on the haziest days. In particular, for the Brigantine National Wildlife Refuge Class I area, on the 20 percent worst visibility days in 2000–2004, sulfate accounted for 66 percent of the particle extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional SO_2 control efforts in the eastern United States.

4. Reasonable Progress Goals

Since the State of Delaware does not have a Class I area, it is not required to establish RPGs. However, Delaware has been identified as influencing the visibility impairment of the Brigantine National Wildlife Refuge Class I area, located in the State of New Jersey. As such, Delaware participated in consultations to discuss the reasonable progress goals being considered by New Jersey for the affected Class I area. As a result, the state of New Jersey adopted four RPGs that will provide for reasonable progress towards achieving natural visibility: Timely implementation of BART requirements; a 90 percent reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU comprising a total of 167 stacks (5 are located in Delaware); adoption of a low sulfur fuel oil strategy; and continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

In order to address a timely implementation of BART, as described in Section III B. 5. of this notice, Delaware's Regulation 1146—Electric Generating Unit Multi-Pollutant Regulation was determined to be better than BART for NO_X and SO_2 emissions. The first phase of the emission limits became effective in 2009 and second phase will become effective in 2012. The BART limitation will become effective no later than January 1, 2013, for the PM control strategies identified in Section III.B.5.c.

States were required to reduce SO_2 emissions from the highest emission stacks in the eastern U.S. by 90 percent or if it was infeasible to achieve that level of reduction, an alternative had to be identified which could include other point sources. Delaware's Conective Edge Moor Unit 5 and NRG Indian River Units 1–4 are five of the 167 units identified by MANE–VU as having the highest emissions in the eastern United States. The 2002 base year SO_2 emissions from these five units are 22,121 tons per year. A 90% SO_2 emission reduction of these five units would result in 19,909 tons per year. However, the 2018 SO_2 emission reductions that resulted from the implementation of Regulation 1146 for these five units is 16,662 tons per year. These reductions are not enough to satisfy the 90% emission reduction from the 2002 baseline requirements. However, Delaware considered all of the emission reductions from all the other units obtained through the implementation of Regulation 1146—Electric Generating Unit Multi-Pollutant Regulation and this resulted in 23,826 tons per year, which produced a surplus of 3,917 tons per year of SO_2 emission reductions.

The low sulfur fuel oil strategy has four requirements for the State of Delaware. These requirements are to reduce the distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) no later than 2012, #4 residual oil to 0.25% sulfur by weight no later than 2012, #6 residual oil to 0.3–0.5% sulfur by weight no later than 2012, and further reduce the sulfur content of distillate oil to 15 ppm by 2016. Table 3 shows the SO_2 emission reductions that would result from the implementation of a low sulfur fuel oil strategy in Delaware compared to the

existing currently implemented regulations.

TABLE 3—REASONABLE PROGRESS GOAL—LOW SULFUR FUEL OIL STRATEGY

Low sulfur fuel oil strategy	2018 SO_2 emissions reductions (TPY) based on the low sulfur fuel oil strategy request	2018 SO_2 emissions increase/reduction (TPY) based on existing control measure
Residual Fuel Oil (assumes 0.5% sulfur)	1,445	−1271
Distillate (15 ppm sulfur)	1,205	95
Total	2,650	−1,176

As noted in Table 3, Delaware has a deficiency of 1,176 tons per year of SO_2 emissions. However, as noted above Delaware has a surplus of SO_2 emission reductions of 3,917 tons per year resulting from the implementation of Regulation 1146. This surplus accounts for the SO_2 emission reductions needed to meet the requirements of the low sulfur fuel strategy.

Delaware identified several measures that demonstrate their efforts to continued evaluation of other control measure to reduce SO_2 and NO_X. Delaware's Executive Order 31 requires their Energy Task Force to expand the diversity of fuels used to meet Delaware's current and future energy resources, develop conservation programs to reduce the need to build more electric generation facilities, ensure that energy infrastructure will meet Delaware's future needs for efficiently transporting energy resources, and encourage producers of clean energy technologies and producers of energy efficient products to locate their business operations in Delaware.

5. BART

BART is an element of Delaware's LTS. The BART RH requirement consists of three components: (a) Identification of all the BART eligible sources; (b) an assessment of whether the BART eligible sources are subject to BART; and (c) the determination of the BART controls.

The first component of a BART evaluation is to identify all the BART eligible sources. The BART eligible sources were identified by utilizing the criteria in the BART Guidelines as follows:

- Determine whether one or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines (70 FR 39158–39159);
- Determine whether the emission unit(s) was in existence on August 7, 1977 and begun operation after August 6, 1962;
- Determine whether potential emissions of SO_2, NO_X, and PM_{10} from subject units are 250 tons or more per year.

The BART guidelines recommend addressing SO_2, NO_X, and PM_{10} as visibility-impairment pollutants and leave it up to the discretion of states to evaluate VOC or ammonia emissions. Because of the lack of tools available to estimate emissions and subsequently model VOC and ammonia effects on visibility, and because Delaware is aggressively addressing VOCs through its ozone SIPs, Delaware determined that SO_2, NO_X and $PM_{10/2.5}$ are the only reasonable contributing visibility impairing pollutants to target under BART. Delaware identified four BART eligible sources (consisting of five emission units). One of the four sources is a steel mill and the other three sources are electric generating units as described in Table 4.

TABLE 4—DELAWARE'S BART ELIGIBLE SOURCES

Facility and unit	Plant capacity in megawatts	Unit capacity in megawatts	Pollutants	Location
NGR Indian River—Unit 3	< 750	177	SO_2, NO_X, PM	Millsboro.
City of Dover, McKee Run—Unit 3.	> 750	114	SO_2, NO_X, PM	Dover.
Conectiv Edge Moor—Unit 4 and Unit 5.	> 750	177 and 446	SO_2, NO_X, PM	Wilmington.
Ezrac Claymont Steel—Electric Arc Furnace and Reheater.	Not Applicable	Not Applicable	SO_2, NO_X, PM	Claymont.

The second component of the BART evaluation is to identify those BART eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area are subject to BART. As discussed in the BART guidelines, a state may choose to consider all BART eligible sources to be subject to BART (70 FR 39.161). Consistent with the MANE–VU Board's decision in June 2004 that because of the collective importance of BART sources, BART determinations should be made by the MANE–VU states for each BART eligible source. Delaware identified each of its BART eligible sources as subject to BART.

One of the BART eligible facilities in Delaware the Ezrac Claymont Steel, is a relatively small emissions source with potential emissions that exceeded the statutory threshold of 250 tons per year or more, but the actual emissions of visibility impairing pollutants of well under 250 tons per year. The steel mill requested a limit on its potential to emit, to bring its emissions under 250 tons per year threshold for BART sources. Delaware established federally enforceable terms and conditions in a Title V permit for the Reheat Furnace and Electric Arc Furnace at Evraz Claymont Steel Mill that limit the potential to emit for SO_2, NO_X, and PM_{10} to less than 250 tons per year. In the future if Evrac Claymont Steel request an increase in NO_X, SO_2 and PM emissions greater than 250 tons per year

of any one of these pollutants the facility would become subject to BART.

The final component of a BART evaluation is making BART determinations for all BART subject sources. In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Section (e)(2) of the Regional Haze Rule provides that a State may opt to implement an emissions trading program or other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART. To do so, the State must demonstrate that the emissions trading program or other alternative measure will achieve greater reasonable progress than would be achieved through the installation and operation of BART.

The three sources in Delaware that the State found to be subject to BART are EGUs. As discussed below, Delaware chose to address the BART requirements for SO_2 and NO_X for these sources through an alternative program that limits emissions from all coal-fired and residual oil-fired electric generating units with a nameplate of 25 MW or greater. As this alternative program does not address PM emissions, Delaware conducted BART analyses for PM for the three sources subject to BART.

Sulfur Dioxide and Nitrogen Oxides

In order to determine appropriate NO_X and SO_2 emission rates for inclusion in Regulation 1146, Delaware collected guidance and information from a number of sources to assist in its evaluation of appropriate emissions limits. The methods Delaware used to develop Regulation 1146 incorporate many of the criteria used in the 5 factor analyses required by the Regional Haze Rule and included the following: (1) Control technology effectiveness; (2) capital costs; (3) complexity with regards to application on cycling units; (4) changes in plant auxiliary loads; (5) impact on plant operations and flexibility; (6) operation and maintenance costs; (7) size of the affected units; and (8) expected remaining operating life of the affected units.

Of the eight units subject to Delaware's Regulation 1146, four have been identified as BART units. Regulation 1146 incorporates emissions rate limitations based on a suite of emission reduction technology capabilities, but do not specify or require the installation of any particular emission reduction technology or suite of technologies. Table 5 shows Delaware promulgated emission rate limitations for NO_X and SO_2 in Regulation 1146.

TABLE 5—REGULATION 1146 EMISSION RATE LIMITATIONS

	2009	2012
NO_X—Coal and Residual Oil Fired EGU's	0.15 lb/MMBTU	0.125 lb/MMBTU.
SO_2—Coal Fired EGU's	0.37 lb/MMBTU	0.26 lb/MMBTU.
SO_2—Residual Oil Fired EGU's	0.5% Sulfur Fuel Oil	0.5% Sulfur Fuel Oil.

For the above rate limits, all pounds per one million British Thermal Units (lb/MMBTU) limits are continuous and based on a rolling 24-hour averaging period, that began on May 1, 2009. For the sulfur in fuel oil limits, facilities are not permitted to accept fuel oil with sulfur content greater than 0.5% by weight on or after January 1, 2009.

Delaware did a comparison of Regulation 1146 emission rate limits of all eight units regulated by this rule to the BART presumptive limits for the four BART subject units. This comparison shown in Tables 6 for SO_2 and Table 7 for NO_X demonstrates that because Regulation 1146 emissions rate limits are applicable to a fleet of units larger than the Delaware BART subject units, the total emissions reductions achieved by Regulation 1146, greatly exceed that which would be achieved through application of presumptive BART emissions rate limits on BART subject units only.

TABLE 6—FACILITY EMISSION SCENARIO FOR SO_2 IN TONS

Facility	2002 SO_2	2012 Reg 1146 SO_2	Presumptive BART SO_2
Edge Moor	10,527	3,896	7,619
Indian River	19,956	3,416	15,598
McKee Run	700	480	960

TABLE 7—FACILITY EMISSION SCENARIO FOR NO_X IN TONS

Facility	2002 NO_X	2012 Reg 1146 NO_X	Presumptive BART NO_X
Edge Moor	3,307	1,464	3,570
Indian River	4,491	1,643	4,668
McKee Run	345	120	345

Particulate Matter

Delaware required the BART facilities to conduct an analysis of potential BART control in accordance with 40 CFR 51.308(e)(1)(ii). Each facility began by identifying all available retrofit control technologies and then eliminating all technically infeasible options. The control options considered for all of the EGUs included wet electrostatic precipitators, dry electrostatic precipitators, and

baghouses. However, for Unit 3 at the McKee Run and Unit 5 at the Edge Moor facilities, the two EGUs that use oil as their primary fuel, a switch to lower sulfur fuels and/or natural gas were also considered as potential BART control options.

The McKee Run Unit 3 is a 102 MW Riley Stoker boiler fired on No. 6 fuel oil with natural gas used as a back-up fuel. The boiler is equipped with a mechanical multi-cyclone used as a control device for particulate matter, and equipped with low NO_X burners and fan boost over-fire air to control NO_X emissions. The sulfur content of the No. 6 fuel oil is limited to no greater than 1.0 percent, which restricts SO_2 and particulate matter emissions. The boiler exhausts through a stack 200 feet tall and produces steam to power a 102 MW electric generator. For this unit, Delaware determined a sulfur limit of 0.5% as BART for PM, which will reduce PM emissions by approximately 50%, is cost-effective, and has no significant energy or non-air quality environmental benefits or dis-benefits.

The Edge Moor Unit 4 is a nominal 175 MW dry-bottom, pulverized coal (primary fuel), tangentially-fired boiler equipped with low-NO_X coal burners (LNB) and overfire air (OFA) for the control of NOx emissions and an electrostatic precipitator (ESP) for the control of filterable particulate emissions. Unit 4 is currently permitted to burn coal with a sulfur content of up to 1.0% wt. and Delaware determined that the dry sorbent injection system (DSI) is BART for PM since the existing ESP is effective at reducing particulate matter emissions, and the addition of the DSI system will reduce condensable emissions.

The Edge Moor Unit 5 is a nominal 445 MW residual oil-fired (primary fuel) boiler with oil LNB and OFA for the control of NOx emissions and a multicylone for the control of filterable particulates. Unit 5 is currently permitted to burn oil with a sulfur content of up to 1.0% wt. and Delaware determined a sulfur limit of 0.5% as BART for PM. This will reduce PM emissions by approximately 50%, is cost-effective and has no significant energy or non-air quality environmental benefits or dis-benefits.

The Indian River Unit 3 is a coal-fired, 165 MW EGU equipped with cold-side ESP. Delaware determined that the existing control electrostatic precipitators for PM is BART since it is effective at reducing particulate matter emissions and none of the other PM control options evaluated were cost-effective.

C. Consultation With States and Federal Land Managers

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional haze planning, and was intended to create greater certainty and understanding among RPOs. MANE–VU states held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from VISTAS, Midwest RPO, and the relevant Federal Land Managers were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

On April 28, 2008, Delaware submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). In a letter dated June 17, 2008, the FLM provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and incorporated in Delaware's SIP revision.

On September 23, 2008, Delaware took its Regional Haze SIP out for public hearing and only one comment was received and it indicated general agreement with the proposed SIP revision. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), Delaware commits in their SIP to ongoing consultation with the FLMs on Regional Haze issues throughout the implementation.

D. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with the requirements of 40 CFR 51.308(g), Delaware has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP. The reasonable progress report will evaluate the progress made towards the RPGs for the Brigantine National Wildlife Refuge Class I area, located in New Jersey.

IV. What action is EPA proposing to take?

EPA is proposing to approve a revision to the Delaware State Implementation Plan submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control on September 25, 2008 that addresses regional haze for the first implementation period. EPA is proposing to make a determination that the Delaware Regional Haze SIP contains the emission reductions needed to achieve Delaware's share of emission reductions agreed upon through the regional planning process. Furthermore, Delaware's Regional Haze Plan ensures that emissions from the State will not interfere with the reasonable progress goals for neighboring states' Class I areas. Accordingly, EPA is proposing to find that this revision meets the applicable visibility related requirements of CAA Section 110(a)(2) including but not limited to 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA has determined that the Regional Haze Plan submitted by the State of Delaware satisfies the requirements of the CAA. EPA is taking this action pursuant to those provisions of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Volatile organic compounds.

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

Dated: April 29, 2011.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 2011–11839 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 93
Friday, May 13, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Funding for the Conservation Loan Program; Farm Loan Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Farm Service Agency (FSA) is no longer accepting direct or guaranteed loan applications for the Conservation Loan (CL) Program because of lack of program funding.

DATES: Effective May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Connie Holman, (202) 690–0756. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L 110–246) authorized the new CL Program. The CL Program was implemented on September 3, 2010, when FSA added the CL Program provisions to the existing direct and guaranteed loan regulations found in 7 CFR parts 761, 762, 764, 765, and 766 through the publication of the CL Program interim rule (75 FR 54005—54016). CL funds, when available, can be used to implement conservation practices approved by the Natural Resources Conservation Service, such as the installation of conservation structures; establishment of forest cover; installation of water conservation measures; establishment or improvement of permanent pastures; implementation of manure management; and the adaption of other emerging or existing conservation practices, techniques, or technologies.

This notice announces that FSA is no longer accepting direct or guaranteed loan applications for the CL Program due to lack of funding. However, conservation projects for authorized loan purposes may be funded through FSA's direct and guaranteed Farm Ownership and Farm Operating Loan Programs for eligible applicants.

FOR FURTHER INFORMATION CONTACT: Potential direct loan applicants should contact their FSA State or county office; potential guaranteed loan applicants should contact their lender. Office locations can be found at *http://www.fsa.usda.gov.* A notice will be published in the **Federal Register** announcing the date FSA will resume accepting direct and guaranteed loan applications for the CL Program if funding becomes available.

Signed on: May 9, 2011.

Bruce Nelson,

Acting Administrator, Farm Service Agency.

[FR Doc. 2011–11783 Filed 5–12–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Broadband Subscription and Usage Survey (Supplement to Census Bureau's Current Population Survey).

OMB Control Number: 0660–0021.

Form Number(s): None.

Type of Request: Emergency submission (revision of a currently approved information collection).

Number of Respondents: 54,000.

Average Time per Response: 10 minutes.

Burden Hours: 9,000.

Needs and Uses: NTIA proposes to add 52 questions to the U.S. Census Bureau's July 2011 Current Population Survey (CPS) in order to gather reliable data on broadband (also known as high-speed Internet) use by U.S. households. President Obama has established a national goal of universal, affordable broadband access for all Americans.[1] To that end, the Administration is working with Congress, the Federal Communications Commission (FCC), and other stakeholders to develop and advance economic and regulatory policies that foster broadband deployment and adoption. Current, systematic, and comprehensive data on broadband access and non-use by U.S. households is critical to allow policymakers not only to gauge progress made to date, but also to identify problem areas with a specificity that permits carefully targeted and cost effective responses.

The need for comprehensive broadband data has become more crucial. On February 10, 2011, during a speech in Marquette, Michigan, the President announced his "national wireless initiative," calling for extending the next (4G) generation of wireless service to 98 percent of the country over the next five years. The Government Accountability Office (GAO), NTIA, and the FCC recently issued reports noting the lack of useful broadband data for policymakers, and Congress passed legislation—the Broadband Data Improvement Act in 2008 and the American Recovery and Reinvestment Act in 2009—wholly or partly in response to such criticisms. The Organization for Economic Cooperation and Development (OECD) has ranked the United States low in the number of households with broadband access over the past several years despite a period of rapid growth in the technology's penetration. The OECD looks to Census data as an important input into their inter-country benchmark analyses. Modifying the July 2011 CPS to include NTIA's requested broadband data questions will allow the Commerce Department and NTIA to inform the President's new wireless initiative, respond to Congressional concerns and directives, and work with the OECD in analyzing more recent data.

Affected Public: Individuals and households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by

[1] See *http://www.whitehouse.gov/sites/default/files/20091217-recovery-act-investments-broadband.pdf* (last viewed May 11, 2010).

calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, Fax number (202) 395–7285, or via the Internet at

Dated: May 10, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–11751 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31–2011]

Foreign-Trade Zone 216—Olympia, Washington; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Olympia, grantee of FTZ 216, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 9, 2011.

FTZ 216 was approved by the Board on August 16, 1996 (Board Order 836, 61 FR 45408, 08/29/1996) and expanded on May 8, 2000 (Board Order 1092, 65 FR 33295, 05/23/2000).

The current zone project includes the following sites: *Site 1* (283 acres)—within the Port of Olympia terminal at Budd Bay Inlet of Puget Sound, adjacent to Interstate 5, Olympia; *Site 2* (800 acres)—Olympia Airport and adjacent industrial park, Olympia; *Site 3* (573 acres)—Marvin Road Industrial area, Interstate 5 and Highway 510, Lacy; *Site 4* (109 acres)—Yelm Industrial area, Highway 507 and Highway 510, Yelm; *Site 5* (165 acres)—Port of Centralia Industrial Park, within the Port of Centralia, Lewis County; *Site 6* (87 acres)—Chehalis Industrial area, adjacent to Interstate 5, Chehalis; *Site 7* (269 acres)—within the Port of Chehalis, 321 Maurin Road, Chehalis; *Site 8* (39 acres)—Klein/South Prairie Industrial Park, 118 Klein Road, Chehalis; *Site 9* (420 acres)—within the Port of Shelton, 21 West Sanderson Way, Shelton; *Site 10* (130 acres)—John's Prairie Industrial Park, 1970 East John's Prairie Road, Shelton; *Site 11* (217 acres)—Bremerton Airport South, within Port of Bremerton complex, 8850 SW State Road 3, Bremerton; *Site 12* (312 acres)—Olympia View Industrial Park, Highway 3, Bremerton; and, *Site 13* (24 acres)—67 SW Chehalis Avenue, Chehalis.

The grantee's proposed service area under the ASF would be all of Thurston County and portions of Lewis, Mason and Kitsap Counties, Washington, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Olympia U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include all of the existing sites except Site 8 as "magnet" sites. No usage-driven sites are being requested at this time. The applicant is also requesting authority to delete Site 8 and remove acreage from Sites 1, 3, 4 and 13, as described in the application.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 27, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: May 9, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–11844 Filed 5–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Amended Final Results of Antidumping Duty Administrative Review Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 14, 2011, the U.S. Court of Appeals for the Federal Circuit (CAFC) sustained the U.S. Court of International Trade's (CIT) decision in *Saha Thai Steel Pipe (Public) Co., Ltd.* v. *United States,* Consol Ct. 08–00380, Slip Op. 10–1 (Ct. Int'l Trade January 4, 2010) (*Saha Thai CIT Decision*). *See Saha Thai Steel Pipe (Public) Co., Ltd.* v. *United States,* No. 2010–1220, –1224, 2011 U.S. App. Lexis 2811 (Fed. Cir. Feb. 14, 2011) (*Saha Thai CAFC Decision*). Because all litigation in this matter has now concluded, the Department of Commerce (Department) is amending the final results of the administrative review of the antidumping order on circular welded carbon steel pipes and tubes from Thailand, which covered Saha Thai Steel Pipe (Public) Co., Ltd. (Saha Thai) and the period March 1, 2006, through February 28, 2007. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 73 FR 61019 (October 15, 2008) (*Final Results*).

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5255 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2008, the Department published the final results of its 2006–2007 administrative review of circular welded carbon steel pipes and tubes from Thailand. *See Final Results.* In the *Final Results,* the Department granted an upward adjustment to export price (EP) in accordance with section 772(c)(1) of the Tariff Act of 1930, as amended (the Act), which directs the Department to increase EP by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." We calculated the upward adjustment to EP for exempted import duties on material inputs using Saha Thai's actual yield loss factor rather than the yield loss factor set by the Government of Thailand (GOT). *See Final Results* and accompanying Issues and Decision Memorandum at Comment 4. We also adjusted the cost of production and the constructed value to include an amount equal to the value of the import duties exempted on material inputs. Saha Thai and the Domestic Interested Parties [1] challenged the Department's *Final Results.*

In *Saha Thai Steel Pipe (Public) Company* v. *United States,* Consol. Ct. 08–00380, Slip Op. 09–116 (October 15, 2009), the CIT affirmed the *Final Results* on all but one issue. The CIT directed the Department to recalculate Saha Thai's antidumping margin using the GOT-determined yield loss factor to calculate the adjustment to EP for exempted import duties. On December 11, 2009, the Department issued its final results of redetermination pursuant to the CIT's October 15, 2009 ruling. *See* the Results of Redetermination Pursuant to Remand (found at *http://ia.ita.doc.gov/remands/index.html*) (*Remand*). The CIT issued its final decision on January 4, 2010 affirming the *Remand. See Saha Thai CIT Decision.* Consistent with the CAFC decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990), the Department published, in the **Federal Register,** a notice of a court decision that is not "in harmony" with the Department's final results. *See Circular Welded Carbon Steel Pipes and Tubes From Thailand: Court Decision Not in Harmony with Final Results of Administrative Review,* 75 FR 2487 (January 15, 2010).

On February 22, 2010, Saha Thai appealed the *Saha Thai CIT Decision,* arguing that an increase in the cost of production to account for "fictitious" costs was not warranted. Saha Thai also argued that the inclusion of these exempted import duties in the cost of production constitutes double counting. On March 1, 2010, the Domestic Interested Parties appealed the *Saha Thai CIT Decision* challenging the Department's two-prong test that must be met before the Department makes an upward adjustment to EP pursuant to section 772(c)(B)(1) of the Act. Under the two-prong test, the exporter/producer must show that: (i) The import duty and rebate are directly linked to one another, and (ii) sufficient imports are made to account for the finished merchandise exported to the United States. The Domestic Interested Parties argued that the Department can only increase EP when import duties are "imposed by the country of exportation," and, in this case, the duties were exempted rather than collected and drawn back or rebated. In its *Saha Thai CAFC Decision,* the CAFC rejected Saha Thai's and the Domestic Interested Parties' arguments and upheld the *Saha Thai CIT Decision,* thus sustaining the *Remand* in full. *See Saha Thai CAFC Decision.* No party appealed the CAFC's decision. Because there is now a final and conclusive decision, we are issuing these amended final results of review to reflect the results of the *Remand.*

Amended Final Results of the Review

We are amending the final results of the 2006–2007 administrative review of circular welded carbon steel pipes and tubes from Thailand in accordance with the *Remand.* The revised weighted-average margin for Saha Thai is 4.21 percent for the period March 1, 2006, through February 28, 2007.

Assessment of Duties

The Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by these amended final results. The Department intends to issue liquidation instructions to CBP 15 days after publication of these amended final results in the **Federal Register.** The cash deposit rate will remain the company-specific rate established in the most recently completed administrative review of Saha Thai. *See Circular Welded Carbon Steel Pipes and Tubes From Thailand: Amended Final Results of Antidumping Duty Administrative Review,* 75 FR 73033 (November 29, 2010). We are issuing and publishing these amended final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 9, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–11825 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Domestic Interested Parties are Allied Tube and Conduit Corp. and Wheatland Tube Company.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 13, 2011, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China ("PRC"), covering the period December 1, 2008, through November 30, 2009. We gave interested parties an opportunity to comment on the preliminary results, however we did not receive any comments. As a result, we have not made changes to our margin calculations for the final results of this review. The final dumping margins for this review are listed in the "Final Results of the Review" section below.

DATES: *Effective Date:* May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan or David Layton, 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 or (202) 482–0371, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following the preliminary results of review (*See Certain Cased Pencils From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 2337 (January 13, 2011) ("*Preliminary Results*")), the Department issued an additional supplemental questionnaire to mandatory respondent Shandong Rongxin Import and Export Co., Ltd. ("Rongxin") on January 10, 2011, and received a response on January 28, 2011. The Department also issued an

additional supplemental questionnaire to Beijing Fila Dixon Stationery Company Ltd. ("Beijing Dixon"), the other mandatory respondent, on January 31, 2011. Beijing Dixon responded on February 16, 2011.

We did not receive case briefs from any party, and none of the parties requested a hearing.

Scope of the Order

Imports covered by the order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, *etc.*) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) *Length:* 13.5 or more inches; (2) *sheath diameter:* Not less than one-and-one-quarter inches at any point (before sharpening); and (3) *core length:* not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: Novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one-eighth inches in circumference, composed of turned wood encasing one-and-one-half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of the Review

We determine that the following margins exist for the period December 1, 2008, through November 30, 2009:

Company	Margin (percent)
Beijing Fila Dixon Stationery Company Ltd.	0.00
Shandong Rongxin Import and Export Co., Ltd.	0.17

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer-specific (or customer-specific) assessment rates for merchandise subject to this review. Beijing Dixon reported entered values for its U.S. sales. Therefore, we calculated importer (or customer) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer), and dividing this amount by the entered value of the sales to each importer (or customer). Rongxin did not report entered values for its U.S. sales. Therefore, we calculated a per-unit assessment rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise.

To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the entered value or the estimated entered value, when entered value was not reported. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

We intend to instruct CBP to liquidate entries of subject merchandise exported by the PRC-wide entity at the estimated antidumping duty rate in effect at the time of entry. Because the PRC-wide entity was not reviewed during this period of review, the PRC-wide rate remains 114.90 percent, the rate established in the administrative review for the most recent period.

Cash Deposit Requirements

The following cash-deposit requirements will apply to all shipments of certain cased pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) Because the cash deposit rates for Rongxin and Beijing Dixon are *de minimis, i.e.,* the rate is less than 0.5 percent, no cash deposits will be required for Rongxin and Beijing Dixon; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of the administrative review for the most recent period, which is 114.90 percent; and (4) the cash-deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to the administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written 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 the terms of an APO is a sanctionable violation.

This notice of final results is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 9, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–11847 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order covering certain cased pencils ("pencils") from the People's Republic of China ("PRC"). The period of review is December 1, 2009, through November 30, 2010. Based on the withdrawal of these requests for review, we are now rescinding this administrative review.

DATES: *Effective Date:* May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan or David Layton, at (202) 482–0914 or (202) 482–0371, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the Department published in the **Federal Register** the antidumping duty order on pencils from the PRC. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China,* 59 FR 66909 (December 28, 1994) ("the order"). On December 1, 2010, the Department published a notice of opportunity to request an administrative review of the order covering the period December 1, 2009, through November 30, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 74682 (December 1, 2010).

On December 20, 2010, in accordance with 19 CFR 351.213(b), Beijing Fila Dixon Stationery Company, Ltd. ("Beijing Dixon"), an exporter and an interested party, timely filed a request for administrative review of the order with respect to its exports. On December 29, 2009, Shandong Rongxin Import & Export, Co., Ltd. ("Rongxin"), a foreign producer and exporter, timely filed a request for administrative review of the order with respect to its exports. Based on these requests, on January 28, 2011, the Department initiated an administrative review of the antidumping duty order on pencils from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On March 15, 2011, Rongxin withdrew its request for administrative review. On April 6, 2011, Beijing Dixon withdrew its request for administrative review. Rongxin's and Beijing Dixon's withdrawal requests are within the 90-day period, and no other party requested an administrative review of the antidumping duty order on pencils from the PRC. Therefore, the Department hereby rescinds the administrative review of the antidumping duty order on pencils from the PRC for the period December 1, 2009, through November 30, 2010.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: May 9, 2011.

Christian Marsh,

Deputy Assistant Secretary for AD/CVD Operations.

[FR Doc. 2011–11849 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–942]

Certain Kitchen Shelving and Racks From the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Jennifer Meek, 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) 482–1503 and (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2010, and November 29, 2010, the Department of Commerce ("the Department") published notices of initiation of the administrative review of the countervailing duty order on certain kitchen appliance shelving and racks from the People's Republic of China, covering the review period January 7, 2009, through December 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative*

Reviews, 75 FR 66349 (October 28, 2010) and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 73036 (November 29, 2010).[1] *See also Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction,* 75 FR 69054 (November 10, 2010). In the October 28, 2010 notice, we initiated on five companies requested by Nashville Wire Products Inc. and SSW Holding Company, Inc. (collectively "Petitioners"); after receiving further information from Petitioners, we initiated on two additional companies requested by Petitioners on November 29, 2010.

The current deadline for the preliminary results of this administrative review is June 2, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The full initiation of this review was delayed by one month because we required additional information from Petitioners concerning their review requests for particular companies. After the case was fully initiated, we determined that we needed to obtain quantity and value information for respondent selection purposes because we could not rely on U.S. Customs and Border Protection data, as is our usual practice. In this instance, the Harmonized Tariff Schedule of the United States categories including subject merchandise are overly broad and contain other products. *See* Memorandum from Joseph Shuler, International Trade Compliance Analyst of AD/CVD Operations, Office 1, to Susan H. Kuhbach, Director of AD/CVD Operations, Office 1, "Selection of Respondents for the Countervailing Duty Administrative Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China" dated January 25, 2011. Given these delays, we do not have sufficient time to adequately analyze all questionnaire responses by the mandatory respondents, in addition to a new subsidy allegation filed by Petitioners, before the preliminary results due date. Consequently, we have determined that it is not practicable to complete this review within the originally anticipated time limit (*i.e.,* by June 2, 2011). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to not later than September 30, 2011, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 9, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–11845 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Department notes that only the period of review ("POR") for the antidumping duty administrative review was included in the October 28, 2010 notice, *see generally* 75 FR 69059. All notices concerning the countervailing duty review of the order apply to the POR referenced in the initiation notices and this notice—January 7, 2009 through December 31, 2009.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 14, 2011, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") results of redetermination pursuant to the CIT's remand order in *Amanda Foods (Vietnam) Ltd., et al.,* v. *United States,* Consol. Court No. 08–00301 (June 17, 2010).[1]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) ("Timken"), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* F.3d, Court No. 2010–1024, 1090 (Fed. Cir. December 9, 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination and is amending the final results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam covering the period of review ("POR") of February 1, 2006 through January 31, 2007, with respect to the separate rate margins assigned to Amanda Foods (Vietnam) Ltd.; C.P. Vietnam Livestock Co. Ltd., Cadovimex Seafood Import-Export and Processing Joint Stock Company; Cafatex Fishery Joint Stock Corporation; Can Tho Agricultural and Animal Product Import Export Company; Coastal Fishery Development; Cuulong Seaproducts Company; Danang Seaproducts Import Export Corporation; Frozen Seafoods Factory No. 32, Investment Commerce Fisheries Corporation; Kim Anh Co., Ltd.; Minh Hai Export Frozen Seafood Processing Joint Stock Company; Minh Hai Export Frozen Seafood Processing Joint-Stock Company; Minh Hai Joint-Stock Seafoods Processing Company; Minh Hai Sea Products Import Export Company (Seaprimex Co); Ngoc Sinh Private Enterprise; Nha Trang Fisheries Joint Stock Company; Nha Trang Seaproduct Company; Phu Cuong Seafood Processing and Import-Export Co., Ltd.; Phuong Nam Co. Ltd., Sao Ta Foods Joint Stock Company; Soc Trang Aquatic Products and General Import Export Company; UTXI Aquatic Products Processing Company; and Viet Foods Co., Ltd, (collectively, the "23 Plaintiffs"). *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273 (September 9, 2008) and accompanying Issues and Decision Memorandum ("*Final Results*").

DATES: *Effective Date:* (April 24, 2011)

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; *telephone:* (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

In the second administrative review of the antidumping duty order on shrimp from Vietnam, the Department reviewed

[1] *See* Final Results Of Redetermination Pursuant To Court Remand, Court No. 08–00301, dated December 3, 2010, available at: *http://ia.ita.doc.gov/remands/index.html* ("*Amanda II* remand redetermination"); *see also Amanda Foods (Vietnam) Ltd., et al.,* v. *United States,* Court No. 08–00301 (CIT April 14, 2011) Slip Op. 11–39 (judgment).

63 companies. *See Final Results,* 73 FR at 52275. Of those 63 companies, two companies were selected for individual examination, 26 cooperative, non-individually examined respondents demonstrated eligibility for, and received, a separate rate, and 35 companies were considered part of the Vietnam-Wide entity because they did not demonstrate eligibility for a separate rate. The Department explained in the *Final Results* that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department has limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and *de minimis* rates and rates based entirely on facts available. Because the Department calculated zero and *de minimis* rates, respectively, for the two mandatory respondents, the Department assigned to the non-individually examined respondents in this administrative review with no history of a calculated margin a separate rate of 4.57 percent, [2] as a reasonable method reflective of the range of commercial behavior demonstrated by exporters of the subject merchandise during a very recent period in time. *See Final Results,* 73 FR at 52275 and Comment 6. For those respondents that were not selected for individual examination and received a calculated rate in a more recent or contemporaneous prior segment, we assigned that calculated rate as the company's separate rate in this review. *See id.*

In *Amanda Foods (Vietnam) Ltd., et. al* v. *United States* Court No. 08–00301 Slip Op. 09–106 (CIT September 29, 2009) ("*Amanda I*"), the Court remanded the separate rate assignment methodology to the Department to either assign to Plaintiffs the weighted-average rate of the mandatory respondents, or else provide justification, based on substantial evidence on the record, for using another rate. *See Amanda I* at 30. Consequently, in the Department's remand redetermination for *Amanda I,* we further explained the reasonableness of the methodology applied in the *Final Results.*

In *Amanda Foods (Vietnam) Ltd., et al.,* v. *United States,* Consol. Court No. 08–00301 (June 17, 2010) ("*Amanda II*"), the Court disagreed with the Department's further justification for applying its separate rate methodology, and remanded the issue back to the Department a second time. On remand, the Court ordered the Department to employ a reasonable method {to assign a separate rate}, which may "'include{e} averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated,' 19 U.S.C. 1673d(c)(5)(B) and* * *assign to Plaintiffs dumping margins for the second POR which are reasonable considering the evidence on the record as a whole; to do so, Commerce may reopen the evidentiary record if need be." *See Amanda II* remand opinion and order at 26.

In our *Amanda II* remand redetermination, under respectful protest, the Department determined that, in this instance, it was necessary to reopen the evidentiary record to gather additional information, specific to each of the 23 Plaintiffs, in order to comply with the Court's order. As detailed within footnote 22 of *Amanda II,* we reopened the record to gather the quantity and value of Plaintiffs' sales to the United States during the period of review ("POR") on a count-size specific basis to analyze the data to determine whether a reasonable separate rate assignment methodology is supported by the supplemented evidentiary record. *See Amanda II* at footnote 22. The 23 Plaintiffs provided the necessary data which the Department evaluated to determine whether there was evidence of dumping by the 23 Plaintiffs on the record. *See Amanda II* remand redetermination at 5.

After having conducted our analysis, the Department determined that the record, with the additional count-size specific quantity and value data, did not show evidence of dumping by the 23 Plaintiffs during this POR. *Id.,* at 5–6. Thus, because the Department has not found any evidence of dumping by Plaintiffs during this POR based on the information currently on the record, we determined to assign, under protest, a separate rate to these 23 Plaintiffs equal to the simple average of the dumping margins calculated for the individually-examined companies.[3] *Id.,* at 6–7.

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's April 14, 2011 judgment sustaining the Department's remand redetermination constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondents were reviewed.

Amended Final Results

Because there is now a final court decision with respect to the 23 Plaintiffs named above, revised dumping margins are as follows:

Exporter name[4]	Simple average separate rate margin (*de minimis*)
Amanda Foods (Vietnam) Ltd	0.01
C.P. Vietnam Livestock Co. Ltd., aka C P Vietnam Livestock Co. Ltd., aka C P Livestock	0.01

[2] The 4.57 percent margin is the rate calculated for cooperative separate rate respondents in the underlying investigation.

[3] Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), Minh Phu Seafood Corporation; Minh Phu Seafood Corp., Minh Qui Seafood Co., Ltd., Minh Qui Seafood, Minh Phat Seafood Co., Ltd., Minh Phat Seafood, (collectively, "Minh Phu") and Camau Frozen Seafood Processing Import Export Corporation ("Camimex").

[4] The separate rate margins for the 23 Plaintiffs are inclusive of the companies' names and trade names as they appeared in *Vietnam Shrimp AR2 Final.*

Exporter name[4]	Simple average separate rate margin (*de minimis*)
Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX") aka	0.01
Cai Doi Vam Seafood Import-Export Company (Cadovimex)	
Cafatex Fishery Joint Stock Corporation ("Cafatex Corp.") aka	0.01
Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka	
Cafatex, aka	
Cafatex Vietnam, aka	
Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, aka	
Cas, aka	
Cas Branch, aka	
Cafatex Saigon, aka	
Cafatex Fishery Joint Stock Corporation, aka	
Cafatex Corporation, aka	
Taydo Seafood Enterprise	
Can Tho Agricultural and Animal Product Import Export Company ("CATACO") aka	0.01
Can Tho Agricultural Products aka	
CATACO	
Coastal Fishery Development aka	0.01
Coastal Fisheries Development Corporation (Cofidec) aka	
Coastal Fisheries Development Corporation (Cofidec)	
Cuulong Seaproducts Company ("Cuu Long Seapro") aka	0.01
Cuu Long Seaproducts Limited (Cuulong Seapro)	
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") aka	0.01
Tho Quang Seafood Processing & Export Company, aka	
Seaprodex Danang, aka	
Tho Quang Seafood Processing And Export Company, aka	
Tho Quang	
Frozen Seafoods Factory No. 32, aka	0.01
Frozen Seafoods Fty, aka	
Thuan Phuoc, aka	
Thuan Phuoc Seafoods and Trading Corporation, aka	
Frozen Seafoods Factory 32, aka	
Seafoods and Foodstuff Factory	
Investment Commerce Fisheries Corporation ("Incomfish")	0.01
Kim Anh Co., Ltd.	0.01
Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka	0.01
Minh Hai Jostoco, aka	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco"), aka	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka	
Minh Hai Joint Stock Seafood Processing Joint-Stock Company, aka	
Minh Hai Export Frozen Seafood Processing Joint-Stock Co.	
Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai")	0.01
Minh Hai Sea Products Import Export Company (Seaprimex Co) , aka	0.01
Ca Mau Seafood Joint Stock Company ("SEAPRIMEXCO")	
Ngoc Sinh Private Enterprise, aka	0.01
Ngoc Sinh Seafoods	
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco")	0.01
Nha Trang Seaproduct Company ("Nha Trang Seafoods")	0.01
Phu Cuong Seafood Processing and Import-Export Co., Ltd.	0.01
Phuong Nam Co. Ltd., aka	0.01
Phuong Nam Seafood Co. Ltd.	
Sao Ta Foods Joint Stock Company ("Fimex VN"), aka	0.01
Sao Ta Seafood Factory	
Soc Trang Aquatic Products and General Import Export Company ("Stapimex")	0.01
UTXI Aquatic Products Processing Company, aka	0.01
UT XI Aquatic Products Processing Company, aka	
UT–XI Aquatic Products Processing Company, aka	
UTXI, aka	
UTXI Co. Ltd., aka	
Khanh Loi Seafood Factory, aka	
Hoang Phuong Seafood Factory	
Viet Foods Co., Ltd. ("Viet Foods")	0.01

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from the 23 Plaintiffs based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 9, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–11822 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–22A12]

Export Trade Certificate of Review

ACTION: Notice of Application (84–22A12) to Amend the Export Trade Certificate of Review Issued to Northwest Fruit Exporters, Application No. 84–22A12.

SUMMARY: The Office of Competition and Economic Analysis ("OCEA") of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 84–22A12."

The Northwest Fruit Exporters' ("NWF") original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984), and last amended on August 18, 2010 (75 FR 51980), August 19, 2010. A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, WA 98901.

Contact: James R. Archer, Manager, (509) 576–8004.

Application No.: 84–22A12.

Date Deemed Submitted: April 29, 2011.

Proposed Amendment: NWF seeks to amend its Certificate to:

1. Add the following companies as a new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Frosty Packing Co. LLC (Yakima, WA), J & D Packing LLC (Outlook, WA), and Polehn Farm's Inc. (The Dalles, OR); and

2. *Remove the following companies as a Member of NWF's Certificate:* Cervantes Orchards & Vineyards LLC (Grandview, WA), Chief Orchards LLC (Yakima, WA), Dovex Fruit Co. (Wenatchee, WA), and Jack Frost Fruit Co. (Yakima, WA); and,

3. *Change the name of the following member:* Conrad and Gilbert Fruit of Grandview, WA is now Conrad & Adams Fruit LLC.

Dated: May 5, 2011.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–11720 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 9, 2010, the Department of Commerce ("Department") published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China ("PRC").[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We continue to find that certain exporters have sold subject merchandise at less than normal value during the period of review ("POR"), March 25, 2008, through November 30, 2009.

DATES: *Effective Date:* May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6905 or (202) 482–5260, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2010, the Department published in the **Federal Register** the *Preliminary Results* of this administrative review. On December 9, 2010, both M&B Metal Products Co., Inc. ("Petitioner") and Shaoxing Dingli Metal Clotheshorse Co., Ltd., ("Dingli") filed a request for a public hearing. On December 22, 2010, Petitioner submitted additional surrogate value ("SV") information. On January 3, 2011, Dingli filed comments rebutting Petitioner's December 22, 2010, SV information. On January 7, 2011, the Department extended in the **Federal Register** the deadline for the final results by 60 days.

[1] *See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review,* 75 FR 68758 (November 9, 2010) ("*Preliminary Results*").

See Steel Wire Garment Hangers From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review, 76 FR 1134 (January 7, 2011).

On March 17, 2011, we reset the schedule for interested parties to submit case briefs and rebuttal briefs to March 24, 2011, and March 29, 2011, respectively. On March 17, 2011, the Department placed certain entry data, obtained from the U.S. Customs and Border Protection ("CBP") with respect to Dingli, on the record and solicited comments from interested parties. Both Petitioner and Dingli filed comments regarding this data on March 21, 2011. Dingli filed rebuttal comments on March 23, 2011. On March 23, 2011, Shanghai Wells Hanger Co., Ltd.[2] ("Wells") filed its case brief. On March 24, 2011, Petitioner, Dingli, Fabricare (U.S. importer), and one of the separate rate respondents filed case briefs.[3] On April 1, 2011, Petitioner, Dingli, and the Shaoxing Metal Companies filed rebuttal briefs. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), as all hearing requests made by interested parties were withdrawn.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted a verification of Dingli's questionnaire responses.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the *Decision Memo,* which is dated concurrently with this notice. A list of the issues which parties raised and to which we respond in the *Decision Memo* is attached to this notice as an Appendix. The *Decision Memo* is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at http://www.trade.gov/ia. The paper copy and electronic version of the memorandum are identical in content.

Final Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department preliminarily rescinded the review, in part, with respect to five companies that stated that they made no shipments of subject merchandise during the POR. These companies are: Viet Anh Import-Export Joint Stock Company; Dong Nam A Co., Ltd.; Vietnam Hangers Joint Stock Company; Royal McGoun Chemicals Inc.; and NV Hanger Co., Ltd. *See Preliminary Results* at 68759. Because the Department did not receive any information to the contrary, we continue to find that these companies did not make any shipments during the POR. Thus, for these final results, we are rescinding this review, in part, with respect to the five above-named companies, in accordance with 19 CFR 351.213(d)(3).

Changes Since the Preliminary Results

Based on a review of the record, the verifications, and comments received from parties regarding our *Preliminary Results,* we have made changes to the surrogate financial ratio calculation and to the dumping margin calculations for Wells and Dingli in the final results. *See Decision Memo* at Comment 2. We have also corrected errors from the *Preliminary Results* alleged by Wells and Dingli. *See Decision Memo* at Comments 5 and 7. Lastly, we have made certain changes to a portion of Dingli's submitted sales data as a result of the verification findings and minor corrections presented at verification. For all detailed changes made to Dingli's reported sales and factor data, *see* Decision Memo at Comments 4B and 4F; *see also* "Memorandum to the File from Josh Startup, Case Analyst: Program Analysis for the Final Results of Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Shaoxing Dingli Metal Clotheshorse Co., Ltd.," ("Dingli Final Analysis Memo"), dated concurrently with this notice.

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule ("HTSUS") subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Separate Rates

In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See Policy Bulletin 5.1*[5]; *see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

In our *Preliminary Results,* we determined that the following

[2] In the *Preliminary Results,* we preliminarily found that Wells, Hong Kong Wells Limited ("HK Wells"), and Hong Kong Wells Limited (USA) ("Wells USA") are affiliated, pursuant to sections 771(33)(A), (E), and (F) of the Tariff Act of 1930, as amended ("the Act"). We also preliminarily found that Wells and HK Wells should be treated as a single entity for the purposes of this administrative review. *See Preliminary Results* 76 FR at 68759. For the final results, we continue to find that Wells, HK Wells, and Wells USA are affiliated pursuant to sections 771(33)(A), (E), and (F) of the Act and that Wells and HK Wells comprise a single entity, pursuant to 19 CFR 351.401(f)(1) and (2). *See id.*

[3] *See* the "Background" section of the "Steel Wire Garment Hangers from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review," ("*Decision Memo*"), dated concurrently with this notice, for a discussion of the post-case brief letters submitted by Petitioner and Dingli regarding arguments of untimely filed factual information.

[4] From February 22 to February 25, 2011, we verified Dingli's constructed export price ("CEP") sales responses in the United States. *See* "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior Case Analyst, Office 9, and Joshua Startup, Analyst, Office 9, re: Verification of the Sales Response of Shaoxing Dingli Metal Clotheshorse Co., Ltd., in the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China ("PRC")," dated March 16, 2011 ("CEP Report"). Then, from March 7 to March 11, 2011, we verified Dingli's export price ("EP") sales and factors of production ("FOP") responses. *See* "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Irene Gorelik, Senior Case Analyst, Office 9, and Joshua Startup, Analyst, Office 9, re: Verification of the Sales and Factors Response of Shaoxing Dingli Metal Clotheshorse Co., Ltd. in the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China ("PRC")," dated March 17, 2011 ("EP Report").

[5] *See Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* 70 FR 17233 (April 5, 2005), also available at: *http://ia.ita.doc.gov/policy/index.html.*

companies met the criteria for separate rate status: (1) Shaoxing Gangyuan Metal Manufactured Co. Ltd.; Shaoxing Tongzhou Metal Manufactured Co. Ltd.; and Shaoxing Andrew Metal Manufactured Co., Ltd.[6]; (2) Shaoxing Shunji Metal Clotheshorse Co., Ltd.; (3) Yiwu Ao-Si Metal Products Co., Ltd.; (4) Shangyu Baoxiang Metal Manufactured Co., Ltd.; (5) Jiaxing Boyi Medical Device Co., Ltd.; (6) Pu Jiang County Command Metal Products Co., Ltd.; (7) Shaoxing Meideli Metal Hanger Co., Ltd.; (8) Shaoxing Zhongbao Metal Manufactured Co., Ltd.; (9) Zhejiang Lucky Cloud Hanger Co., Ltd.; (10) Ningbo Dasheng Hanger Ind. Co., Ltd.; (11) Shaoxing Guochao Metallic Products Co., Ltd.; (12) Shanghai Jianhai International Trade Co., Ltd.; and (13) Shaoxing Liangbao Metal Manufactured Co., Ltd.

Additionally, in the *Preliminary Results,* we noted that the Department received completed responses to the Section A portion of the NME questionnaire from the individually reviewed respondents (Dingli and Wells), which contained information pertaining to the companies' eligibility for a separate rate. With respect to Wells, we preliminarily determined that there is no PRC ownership, and because the Department has no evidence indicating that Wells is under the control of the PRC, a separate rates analysis was not necessary to determine whether it is independent from government control. With respect to Dingli, we preliminarily granted separate rate status to it based on its submitted information. *See Preliminary Results,* 75 FR at 68760–62.

We did not receive any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of these preliminary separate rate determinations. Therefore, the Department continues to find that Wells, Dingli, and the 13 above-named, non-individually examined companies meet the criteria for a separate rate.

[6] In the *Preliminary Results,* we stated that these three companies all reported in their individual separate rate certifications that their affiliations with one another, legal structure, and ownership structure have not changed since the underlying investigation. For the final results, we continue to find that Shaoxing Gangyuan Metal Manufactured Co. Ltd., Shaoxing Tongzhou Metal Manufactured Co. Ltd., and Shaoxing Andrew Metal Manufactured Co., Ltd. comprise a single entity, as determined in the underlying investigation, pursuant to 19 CFR 351.401(f)(1) and (2). *See Preliminary Results* at 68766; *see also Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587, 47589 (August 14, 2008) ("*Hangers LTFV*").

Separate Rate Calculation

The separate rate is determined based on the estimated weighted-average antidumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on AFA.[7] In this administrative review, one mandatory respondent, Dingli, has an estimated weighted-average antidumping margin which is above *de minimis* and which is not based entirely on AFA. Therefore, because there is only one weighted-average antidumping margin calculated for these final results that is neither zero, *de minimis,* nor based entirely on AFA, we have assigned Dingli's margin to the companies not selected for individual examination.[8]

Facts Available

Section 776(a) of the Act provides that if necessary information is not available on the record, or an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified; the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from (the Department) for information, notifies (the Department) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify its requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with its request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority * * *, the administering authority * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." The Department's determination is in accordance with sections 776(a)(2)(A), (B), and 776(b) of the Act.[9]

For the final results, in accordance with sections 776(a)(2)(A) and (B) of the Act, we have determined that the use of facts available ("FA") is appropriate to account for Dingli's consumption of its hydrochloric acid ("HCL") input in the production of subject merchandise. *See*

[7] *See* Decision Memo at Comment 3.

[8] *See, e.g., Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 16379, 16381–16382 (March 23, 2011); *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349, 11350 (March 17, 2009) (where the Department stated "For the exporters subject to review that are determined to be eligible for separate-rate status, but were not selected as mandatory respondents, the Department normally establishes a weighted-average margin based on an average of the rates it calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on facts available. In this proceeding, there is only one such mandatory respondent, QVD. Accordingly, the rate calculated for QVD is applied as the rate for Agifish and Anvifish.").

[9] *See, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1. *See also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity) unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007) ("*Vietnam Shrimp AR1*").

Decision Memo at Comment 4C. During the on-site verification of Dingli's sales and factors of production, we found that Dingli failed to report information requested by the Department; specifically, one month of HCL consumption, which is a direct material used to produce subject merchandise. Additionally, for the final results, in accordance with section 776(b) of the Act, we find that Dingli failed to cooperate by not acting to the best of its ability to comply with our request for information and, as a result, have determined that the application of an adverse inference is warranted for Dingli's unreported consumption of HCL. *See id.*; *see also* "EP Report" at 2 and 17. As an adverse inference, we are using the highest reported monthly consumption quantity of HCL during the POR as a proxy for the unreported month in the normal value calculation. *See* "Dingli Final Analysis Memo" for further details.

Final Results of Review

The final weighted-average dumping margins for the POR are as follows:

STEEL WIRE GARMENT HANGERS FROM THE PEOPLE'S REPUBLIC OF CHINA

Exporter	Weighted average margin (%)
Shanghai Wells Hanger Co., Ltd. and/or Hong Kong Wells Limited [10]	0.15
Shaoxing Dingli Metal Clotheshorse Co., Ltd	1.71
Shaoxing Gangyuan Metal Manufactured Co. Ltd [11]	1.71
Shaoxing Andrew Metal Manufactured Co., Ltd	1.71
Shaoxing Tongzhou Metal Manufactured Co. Ltd	1.71
Shaoxing Shunji Metal Clotheshorse Co. Ltd	1.71
Yiwu Ao-Si Metal Products Co., Ltd	1.71
Shangyu Baoxiang Metal Manufactured Co., Ltd	1.71
Jiaxing Boyi Medical Device Co., Ltd	1.71
Pu Jiang County Command Metal Products Co. Ltd	1.71
Shaoxing Meideli Metal Hanger Co., Ltd	1.71
Shaoxing Zhongbao Metal Manufactured Co., Ltd	1.71
Zhejiang Lucky Cloud Hanger Co., Ltd	1.71
Ningbo Dasheng Hanger Ind. Co., Ltd	1.71
Shaoxing Guochao Metallic Products Co. Ltd	1.71
Shanghai Jianhai International Trade Co., Ltd	1.71
Shaoxing Liangbao Metal Manufactured Co., Ltd	1.71
PRC-Wide Entity [12]	187.25

[10] For the final results, we continue to find that Wells and HK Wells comprise a single entity, as determined in the Preliminary Results, pursuant to 19 CFR 351.401(f)(1) and (2). *See Preliminary Results,* 75 FR at 68759.

[11] For the final results, we continue to find that Shaoxing Gangyuan Metal Manufactured Co. Ltd., Shaoxing Tongzhou Metal Manufactured Co. Ltd., and Shaoxing Andrew Metal Manufactured Co., Ltd. comprise a single entity, as determined in the underlying investigation, pursuant to 19 CFR 351.401(f)(1) and (2). *See Preliminary Results,* 75 FR at 68766; *see also Hangers LTFV,* 73 FR at 47589.

[12] The PRC-Wide entity continues to include the 94 companies listed in footnote 17 of the *Preliminary Results. See Preliminary Results,* 75 FR at 68762.

Assessment

Upon issuance of these final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2). For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

With respect to the companies upon which we have rescinded this review, we intend to issue assessment instructions to CBP 15 days after publication of this notice. The Department will instruct CBP to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate

is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 187.25 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 9, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

General Issues

Comment 1: Treatment of Sales with Negative Margins

Comment 2: Surrogate Financial Ratios

Comment 3: Calculation of the Separate Rate Margin

Company-Specific Issues

Dingli

Comment 4: Whether to Assign Adverse Facts Available ("AFA") to Dingli

A. U.S. Customs and Border Protection ("CBP") Data on the Record

B. Hanger Quantity Conversions

C. Hydrochloric Acid ("HCL") Consumption

D. Weight of Packing Cartons

E. Sale of Machinery

F. Changes to Margin Calculation Per Verification Findings

Comment 5: Calculation of Domestic Movement Expenses

Comment 6: Byproduct Offset for Scrap Iron Buckets

Wells

Comment 7: Calculation of Domestic Movement Expenses

[FR Doc. 2011–11871 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA433

Public Meeting of the Steering Committee for the National Fish, Wildlife and Plants Climate Adaptation Strategy

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

ACTION: Notice.

SUMMARY: The Steering Committee for the National Fish, Wildlife, and Plants Climate Adaptation Strategy will be holding its second meeting. This meeting will focus on the progress of the Strategy's Technical Teams and stakeholder engagement.

DATES: The second Steering Committee meeting will be held Wednesday, June 1, 2011, from 1:15 p.m. to 4 p.m. There will be opportunity for public comment during the meeting at approximately 3 p.m., and written comments may be submitted via the Web site *http://www.wildlifeadaptation.gov.*

ADDRESSES: The meeting will be held in the Spring Room of the Silver Spring Civic Building, One Veterans Place (corner of Ellsworth Drive and Fenton Street), Silver Spring, Maryland 20910. Additional information on the National Fish, Wildlife, and Plants Climate Adaptation Strategy can be found at *http://www.wildlifeadaptationstrategy.gov.*

FOR FURTHER INFORMATION CONTACT: Roger Griffis, Climate Change Coordinator, Office of Science and Technology, NMFS/NOAA, 1315 East-West Highway, 12th Floor, Silver Spring, Maryland 20910, or *Roger.B.Griffis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Fish, Wildlife, and Plants Climate Adaptation Strategy (Strategy) is an integrated, coordinated, and comprehensive response to the threats of climate change. This multi-partner effort will outline a unified approach to maintaining the key terrestrial, freshwater and marine ecosystems needed to sustain fish, wildlife and plant resources and the services they provide in the face of accelerating climate change.

The Strategy will be guided by input and participation from a diverse group of agencies from across the country. For this reason, Federal, State and tribal agencies have been asked to participate as members of an intergovernmental Steering Committee to provide advice and support for development of the Strategy by 2012.

The Steering Committee consists of representatives from 16 Federal agencies with management authorities for fish, wildlife, plants, or their habitat, as well as representatives from five state fish and wildlife agencies and two tribal commissions. The purpose of the Steering Committee is to exchange views, information, and advice relating to the management and implementation of the Strategy. The Committee will oversee the Technical (writing) Teams, ensure a robust engagement process with a diverse group of stakeholders, and facilitate coordination and communication across agencies and departments.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

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

Dated: May 9, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–11815 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA435

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a conference call of the Groundfish Essential Fish Habitat Review Committee (EFHRC) that is open to the public.

DATES: The conference call will be held Tuesday, May 31, 2011, from 12 p.m. until 2 p.m. Pacific Time.

ADDRESSES: A listening station will be available to the public, in the Small Conference Room at the Pacific Council offices, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; *telephone:* (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the conference call is to plan for acquiring data and information pertinent to a review of groundfish essential fish habitat, to summarize the Pacific Council action from the April 2011 meeting, and to discuss the next steps and future meetings. Other issues relevant to the Pacific Coast groundfish EFH review may be addressed as time permits.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal action during this meeting. EFHRC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 10, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–11747 Filed 5–12–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletion from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes a service from the Procurement List previously provided by such agency.

DATES: *Effective Date:* June 13, 2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 3/11/2011 (76 FR 13362–13363), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

Following the publication in the **Federal Register** of the initial notice containing this and other projects, the Committee received a comment from a self-identified small business owner objecting to the addition of the proposed list of product or service requirements to the Procurement List. While the comment did not specify a particular project, the commenter stated that adding these items would deny small business the opportunity to compete for these projects in the future.

The Javits-Wagner-O'Day Act and its legislative history unmistakably show that Congress understood the importance of job creation for people who are blind or have severe disabilities that would take place when products or services are added to the Procurement List. Through the Act, Congress directed the Committee to make appropriate determinations that would benefit people who are blind or severely disabled. Congress also realized that the decisions could impact other groups. Therefore, when the Committee makes appropriate determinations to add items to the Procurement List, it is meeting its statutory responsibility. In this case, the Committee has determined that this project is suitable for procurement by the government and will be added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Base Supply Center, Rock Island Arsenal, 3154 Rodman Avenue, Rock Island, IL.

NPA: Association for Retarded Citizens of Rock Island County, Rock Island, IL.

Contracting Activity: Dept of the Army, SR W0K8 USA ROCK ISL Arsenal, Rock Island, IL.

Deletion

On 3/11/2011 (76 FR 13362–13363), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Recycling Service, Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS.

NPA: Goodwill Industries of Mississippi, Inc., Ridgeland, MS

Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–11817 Filed 5–12–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions From the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously provided by such agencies.

Comments Must Be Received on or Before: June 13, 2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7530–00–NIB–1028—Dated 18-month Paper Wall Planner, 24″ × 37″

NSN: 7530–00–NIB–1029—Dated 12-Month 2-Sided Laminated Wall Planner, 24″ × 37″

NPA: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL

Contracting Activity: GSA/FSS Household and Industrial Furniture, Arlington, VA.

Coverage: A-List for the Total Government Requirement as Aggregated by the General Services Administration.

Services

Service Type/Locations: Janitorial Services, Norman Armed Force Reserve Center (AFRC), Norman, OK; Mustang Armed Force Reserve Center (AFRC), Mustang, OK.

NPA: Dale Rogers Training Center, Inc., Oklahoma City, OK.

Contracting Activity: Dept of the Army, W7NV USPFO Activity OK ARNG, Oklahoma City, OK

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Records Management Service, Veterans Affairs Medical Center, 4100 West 3rd Street, Dayton, OH.

NPA: Goodwill Easter Seals Miami Valley, Dayton, OH.

Contracting Activity: Department of Veterans Affairs, Dayton, OH.

Service Type/Location: Grounds Maintenance, Federal Service Center, 5600 Rickenbacker Road, Bell, CA.

NPA: Braswell Rehabilitation Institute for Development of Growth & Educational Services, Inc., Pomona, CA.

Contracting Activity: General Services Administration, FPDS Agency Coordinator, Washington, DC.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center: Major Bias, Huntington, WV.

NPA: Goodwill Industries of KYOWVA Area, Inc., Huntington, WV.

Contracting Activity: Dept. of the Army,

W40M NATL Region Contract OFC, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–11816 Filed 5–12–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, May 18, 2011; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: May 10, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–11887 Filed 5–11–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Wage Committee

AGENCY: DoD.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on Tuesday, June 14, 2011, and Tuesday, June 28, 2011, at 10 a.m. at 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: May 10, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–11773 Filed 5–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0049]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice; Correction.

SUMMARY: On Monday, May 9, 2011 (76 FR 26712), the Department of Defense published a notice to alter a system of records. Extraneous text was included in the notice. Deleted from the notice is the text immediately below the signature block of the Alternate Federal Register Liaison Officer through the eleven enumerations that follow. The text including and following "DPFPA 01" remains unchanged.

Dated: May 10, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–11772 Filed 5–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0051]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Information Systems Agency 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 without further notice on June 13, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and/RIN 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, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103, or Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Defense Information Systems Agency proposes to delete a 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: May 9, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
K890.09

Enterprise Data and Global Exchange (EDGE) Knowledge Management Portal (March 21, 2006, 71 FR 14187).

Reason: Enterprise Data and Global Exchange (EDGE) Knowledge Management Portal has been replaced with DISA INTRANET Services.

[FR Doc. 2011–11768 Filed 5–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0052]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete three systems of records.

SUMMARY: The Defense Logistics Agency proposes to delete three systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 13, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/RIN 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, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jody Sinkler at (703) 767–5045, or Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in its entirety. The proposed amendment 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 new or altered systems reports.

Dated: May 9, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION: S170.01, Invention Disclosure (July 14, 2008, 73 FR 40304).

Reason: There is no indication that any records have been collected and maintained under this Defense Logistics Agency (DLA) system of records. Therefore, the notice is being deleted from the DLA inventory of Privacy Act systems of records.

DELETION: S170.02, Royalties (July 14, 2008, 73 FR 40304).

Reason: There is no indication that any records have been collected and maintained under this Defense Logistics Agency (DLA) system of records. Therefore, the notice is being deleted from the DLA inventory of Privacy Act systems of records.

DELETION: S170.03, Patent Licenses and Assignments (July 14, 2008, 73 FR 40304).

Reason: There is no indication that any records have been collected and maintained under this Defense Logistics Agency (DLA) system of records. Therefore, the notice is being deleted from the DLA inventory of Privacy Act systems of records.

[FR Doc. 2011–11770 Filed 5–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0053]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend Two Systems of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on June 13, 2011 unless comments are received which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

• *Federal Rulemaking Portal: <http://www.regulations.gov>.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *<http://www.regulations.gov>* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045, or Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record 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 above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are 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 new or altered systems reports.

Dated: May 9, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.10

SYSTEM NAME:

Personnel Security Files (June 8, 2009; 74 FR 27117).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Defense Logistics Agency Intelligence Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221 and the Defense Logistics Agency (DLA) Intelligence Offices of the DLA Primary Level Field Activities (PLFAs). The PLFA mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

PURPOSE(S):

Within entry, replace "Security Managers" with "Personnel Security Specialists."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Personnel Security Specialists, Defense Logistics Agency, ATTN: DLA Intelligence Office, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221; and the Personnel Security Specialists of the DLA Primary Level Field Activities (PLFAs). The PLFA mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should contain the subject individual's full name, Social Security Number (SSN), date and place of birth, current address, and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should contain the subject individual's full name, Social Security Number (SSN), date and place of birth, current address, and telephone number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format. The unsworn declaration statement must be signed and dated.

If executed within the United States, its territories, possessions, or commonwealths the statement must read: 'I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States, its territories, possessions, or commonwealths the statement must read: 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'"

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S500.10

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Defense Logistics Agency Intelligence Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221 and the Defense Logistics Agency (DLA) Intelligence Offices of the DLA Primary Level Field Activities (PLFAs). The PLFA mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA civilian employees, military personnel and contractors who have been the subject of a personnel security investigation pertaining to their qualifications and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), home address and telephone number, and personal history statements; evidence of security eligibility determinations and security clearances granted to individuals; report of investigation conducted by investigative agencies and organizations; and certifications of security briefings and debriefings signed by individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 10450, Security Requirements for Government Employment; E.O. 12958, Classified National Security Information; DoD Regulation 5200.2, DoD Personnel Security Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are used for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information. DLA Personnel Security Specialists, supervisors, and management officials use the records to determine whether an individual is eligible to occupy a sensitive position and/or have been cleared for or granted access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and/or electronic storage media.

RETRIEVABILITY:

Records are retrieved alphabetically by subject individual's name and Social Security Number (SSN).

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access.

During non-duty hours, records are secured in locked or guarded buildings, locked offices, and/or locked or guarded cabinets. The electronic records system employs user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Records of security eligibility determinations, evidence of security clearances and related documents are retained as long as the person is employed or assigned to DLA. After the person leaves DLA, the reports are placed in an inactive file for two years, and then destroyed. Reports of investigations are destroyed 90 days after a security eligibility determination is made.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Specialists, Defense Logistics Agency, ATTN: DLA Intelligence Office, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221; and the Personnel Security Specialists of the DLA Primary Level Field Activities (PLFAs). The PLFA mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should contain the subject individual's full name, Social Security Number (SSN), date and place of birth, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should contain the subject individual's full name, Social Security Number (SSN), date and place of birth, current address, and telephone number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format. The unsworn declaration statement must be signed and dated.

If executed within the United States, its territories, possessions, or commonwealths the statement must read: 'I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States, its territories, possessions, or commonwealths the statement must read: 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject or from investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and published in 32 CFR part 323. For additional information contact the system manager.

* * * * *

S153.20

SYSTEM NAME:

Automated Listing of Eligibility and Clearances (ALEC) (June 8, 2009; 74 FR 27121).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA, 22060–6221. Defense Logistics Agency (DLA) Primary Level Field Activities and the DLA Intelligence Office have on-line access to the data concerning personnel under their jurisdiction."

* * * * *

PURPOSE(S):

Within entry, replace "Security Managers" with "Personnel Security Specialists."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Personnel Security Specialist, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and Personnel Security Specialists at the DLA Primary Level Field Activities (PLFAs). The PLFA mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S153.20

SYSTEM NAME:

Automated Listing of Eligibility and Clearances (ALEC).

SYSTEM LOCATION:

Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA, 22060–6221. Defense Logistics Agency (DLA) Primary Level Field Activities and the DLA Intelligence Office have on-line access to the data concerning personnel under their jurisdiction.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA civilian and military personnel who have been found eligible

for employment in a sensitive position or eligible for or granted a security clearance or access to information classified in the interests of national security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), date of birth, place of birth (state), country, citizenship, job series, category, organization, servicing activity, employing activity, position sensitivity and determination date, type of investigation, investigating agency, date initiated and completed, periodic reinvestigation (PR) due date, eligibility and date, access and date, new investigation pending (type and date initiated), Non-Disclosure Agreement (NDA) executed and date, date of departure, and special accesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12958, Classified National Security Information; DoD 5200.2–R, DoD Personnel Security Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are collected and maintained for the purpose of centralizing eligibility and clearance information for use by all Defense Logistics Agency Personnel Security Specialists (listings are generated from ALEC in the form of a Record Activity Clearance Eligibility Listing (RACEL)). DLA Personnel Security Specialists use the data to determine whether or not DLA employees are eligible for or occupy sensitive positions; whether they, or assigned military personnel, have been cleared for or granted access to classified information; and the level of such clearance or access, if granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Federal government agencies and Federal government contractors for the purpose of verifying clearance status and other clearance related information when necessary in the course of official business.

The DoD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and/or electronic storage media.

RETRIEVABILITY:

Individual's name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in a secure, limited access, and monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information and received Information Assurance and Privacy Act training. Paper records are marked FOUO–PRIVACY ACT PROTECTED DATA and stored in a locked container when not in use.

RETENTION AND DISPOSAL:

The Automated Listing of Eligibility and Clearance is published monthly and prior listings are destroyed as soon as the new listings are verified, but in no case beyond 90 days. Electronic records are purged two years after the individual departs DLA.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Specialist, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and Personnel Security Specialists at the DLA Primary Level Field Activities (PLFAs). The PLFA mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Certificates of clearance or types of personnel security investigations previously completed by the Office of Personnel Management, the Joint Personnel Adjudication System, the Federal Bureau of Investigation, and investigative units of the Army, Navy, Air Force, or other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–11771 Filed 5–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) for Training Land Expansion at Fort Benning, GA and AL

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army has prepared a DEIS pursuant to the National Environmental Policy Act of 1969 to analyze the potential environmental impacts connected with the proposed acquisition of approximately 82,800 acres of land in the vicinity of Fort Benning, Georgia (GA) and Alabama (AL) for military training use. This Proposed Action will allow Fort Benning's Soldiers to conduct realistic maneuver training exercises through the battalion level as they train for contingency operations. The DEIS analyzes five acquisition alternatives, as well as the No Action Alternative (not acquiring more training land). Alternative 3 (acquire land in Stewart County, GA) is the Army's preferred alternative.

DATES: The public comment period will end 45 days after publication of the

NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Questions or comments regarding the DEIS should be forwarded to Ms. Monica Manganaro, Fort Benning Public Affairs Office, 6460 Way Avenue, Building 2838, Fort Benning, GA 31905, or e-mailed to *land.benning@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Training Land Expansion Program hotline at (706) 545–8830 from 9 a.m. to 4 p.m.

SUPPLEMENTARY INFORMATION: Fort Benning, comprised of approximately 182,000 contiguous acres, is located in west-central GA and east-central AL. Fort Benning, home to the Maneuver Center of Excellence, is the Army's premier basic training installation, training all Infantry, Armor, and Cavalry Soldiers in basic and advanced combat skills, as well as Airborne Soldiers and Rangers. Fort Benning also has the mission to study, test, and develop future Infantry and Armor doctrine, weapon systems, ground combat vehicles, robotics, tactics, techniques, and procedures. In addition, Fort Benning supports the training of deployable units stationed at Fort Benning from the U.S. Army Forces Command and U.S. Army Special Operations Command.

The Army has determined Fort Benning has a doctrinal training land shortfall of 228,836 acres for heavy maneuver training. The shortfall means units must train in a degraded, less than optimal manner, resulting in less effective training than would be possible with additional maneuver land. Using a combination of land management practices and coordinated range scheduling, as well as the Army Compatible Use Buffer Program, Fort Benning has determined it can achieve sufficient training benefit by acquiring approximately 82,800 acres of additional training land. Land acquisition would facilitate Fort Benning's compliance with a Jeopardy Biological Opinion issued by the U.S. Fish and Wildlife Service related to the red-cockaded woodpecker, which requires that the field training portion of the Army Reconnaissance Course move off the current installation. The additional lands would also help to alleviate scheduling conflicts and training degradation which occur within existing Fort Benning training lands.

The Fort Benning Training Land Expansion DEIS analyzes the potential environmental impacts of six alternatives. The six alternatives include the No Action Alternative, under which the Army would not acquire additional training land, and five acquisition alternatives, each of which would involve the acquisition and use of approximately 82,800 acres of land. The five acquisition alternatives are:

(1) Alternative 1—Acquisition of lands southeast and south of Fort Benning within Marion, Webster and Stewart counties, GA;

(2) Alternative 2—Acquisition of lands to the west of Fort Benning within Russell County, AL;

(3) Alternative 3 (Preferred Alternative)—Acquisition of lands to the south of Fort Benning within Stewart County, GA;

(4) Alternative 4—Acquisition of lands to the south of Fort Benning in Stewart County, GA, and lands to the west of Fort Benning in Russell County, AL; and

(5) Alternative 5—Acquisition of lands to the south of Fort Benning in Stewart County, GA, and lands to the north of Fort Benning in Harris and Talbot counties, GA.

The Army has determined that as a result of the Proposed Action overall significant impacts could occur involving land use (Alternatives 1, 2, and 3), noise, socioeconomics, and traffic and transportation. The Army also anticipates moderate impacts could occur involving land use (Alternatives 4 and 5), airspace, air quality, soils (Alternatives 2 through 5), surface water resources (Alternatives 2 through 5), and wetlands (Alternative 1); minor impacts could occur involving soils (Alternative 1), surface water resources (Alternative 1), wetlands (Alternatives 2 through 5), utilities, hazardous and toxic substances and waste, and safety; and that overall beneficial impacts could occur involving biological resources and cultural resources. The DEIS also identifies practicable mitigation for adverse environmental impacts.

This DEIS also serves as documentation for consultation and public involvement for the Installation's compliance with Section 106 of the National Historic Preservation Act for this action. Fort Benning uses the Army Alternative Procedures as outlined in the Installation's Integrated Cultural Resource Management Plan.

All government agencies, special interest groups and individuals are invited to attend public meetings and/or submit their comments in writing. Information on the time and location of the public meetings will be published in local news media.

The DEIS is available for public review at local libraries and at *http://www.benning.army.mil/garrison/tlep/.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–11345 Filed 5–12–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposed Authorization Under the U.S. Army Corps of Engineers Nationwide Permit Program of U.S. Department of Agriculture, Natural Resources Conservation Service, Categorical Exclusions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to authorize Natural Resources Conservation Service (NRCS) approved categorical exclusions for recurring conservation, restoration, and survey related activities under Nationwide Permit 23 (NWP 23). The Corps is requesting comment on the appropriateness of including these NRCS categorical exclusions under nationwide permit authorization and any conditions or restrictions that should be added so that those categorically excluded activities can be verified by NWP 23 to permit discharges of dredged or fill material and/or structures or work in waters of the United States. These NRCS categorically excluded activities have been approved by Council on Environmental Quality (CEQ) and have been finalized by the NRCS.

DATES: Written comments must be submitted on or before July 12, 2011.

ADDRESSES: You may submit comments, identified by docket number COE–2011–0008, by any of the following methods:

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

E-mail: karen.mulligan@usace.army.mil Include the docket number, COE–2011–0008, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, *Attn:* CECW–CO–R (Karen Mulligan), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2011–0008. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Karen Mulligan, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, DC 20314–1000, by phone at 202–761–4664 or by e-mail at *karen.mulligan@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The Corps of Engineers issued NWP 23 to authorize certain activities conducted by other Federal agencies where the other Federal agency or department has determined, pursuant to the National Environmental Policy Act (NEPA), that the activity is categorically excluded from environmental documentation because it is included within a category of actions that have no more than minimal adverse environmental effects either individually or cumulatively. NWP 23 is intended to reduce duplicative Federal processes when another agency has completed requirements pursuant to NEPA, and to expedite Department of the Army authorizations for those activities that involve a discharge of dredged or fill material and/or structures or work in waters of the United States that have no more than minimal adverse environmental effects on the aquatic environment.

The terms and conditions of NWP 23 describe the general process followed by the Corps to approve categorically excluded activities for use with NWP 23. To have their categorical exclusions (CEs) approved for use with NWP 23, agencies must submit an application to the Office of the Chief of Engineers. Before approving the use of those CEs with NWP 23, the Corps will solicit public comment. The Corps may add additional conditions, including pre-construction notification or reporting requirements, to ensure that categorically excluded activities covered under NWP 23 result in no more than minimal individual and cumulative adverse environmental effects on the aquatic environment.

To date, the Corps has approved the CEs of three federal agencies for inclusion under NWP 23. CEs have been approved for the Bureau of Reclamation, Federal Highway Administration, and United States Coast Guard. Regulatory Guidance Letter 05–07, which was issued on December 8, 2005, provides the current list of approved CEs. This RGL is available on the Corps Headquarters Web site at: *http://www.usace.army.mil/CECW/Documents/cecwo/reg/rgls/rgl05–07.pdf.*

The current NWP 23 was issued on March 12, 2007 (see 72 FR 11092), and expires on March 18, 2012. In the February 16, 2011, issue of the **Federal Register** (76 FR 9174), we proposed to reissue NWP 23 without any changes. The process for approving CEs for use with NWP 23 is independent of the rulemaking process for reissuing or modifying NWP 23. If the Corps approves any additional agency CEs for use with NWP 23, a new Regulatory Guidance Letter will be issued but the NWP itself will not be affected.

The NRCS has requested Corps approval of 26 categorically excluded activities for inclusion in verification under NWP 23. The NRCS has previously adopted these categorically excluded activities pursuant to the CEQ Regulation for Implementing NEPA (40 CFR part 1500 *et seq.*). The list of NRCS categorically excluded activities was approved by the CEQ and has been finalized by the NRCS. Five of the CEs have been established by the NRCS under 7 CFR 650.6 (a)(1–5) and 21 of the CEs have been established under 7 CFR 650.6(d)(1–21).

The Corps review process for the NRCS request to include its 26 categorically excluded activities under NWP 23 starts with today's publication of notice of intent and 60-day comment period. After the comment period has ended, the Corps will evaluate the comments received in response to this notice. If the Corps approves any or all of these categorically excluded activities, Regulatory Guidance Letter 05–07 will be rescinded and replaced with a new Regulatory Guidance Letter that provides a list and description of all categorically excluded activities that are authorized under NWP 23.

Proposal

We are proposing to condition these NRCS categorically excluded activities to require reporting to Corps district offices. NRCS activities that are categorically excluded under NEPA that involve a discharge of dredged or fill material in a water of the United States and that require Department of the Army authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, must be reported to the appropriate district engineer, at least 30 days prior to commencing activities. The report submitted to the district engineer would be required to contain the following information: (1) The site-specific environmental evaluation (NRCS–CPA–52) approved by NRCS staff for the project; (2) a vicinity map showing the location of the proposed activity; and (3) project plans. A blank copy of NRCS's environmental evaluation worksheet is provided in the regulations.gov docket for this action, so that interested parties can see what information will be provided in completed copies of worksheet NRCS–CPA–52.

The district engineer will have 30 days from the date of receipt of the report to notify the project proponent if he or she has determined that the proposed activity does not qualify for NWP 23 authorization. In response to a project-specific report, the district engineer may require compensatory mitigation to ensure that the activity results in minimal individual and cumulative adverse environmental effects on the aquatic environment. In such cases, the district engineer will

send a NWP verification letter to the project proponent, which will include special conditions concerning compensatory mitigation requirements. If the district engineer believes that specific concerns for the aquatic environment or other public interest factors warrant further review, discretionary authority may be exercised on a case-by-case basis to require an individual permit.

If the district engineer does not respond to the submitted report within 30 days of receipt, then the project proponent can proceed under the NWP 23 authorization as long as he or she has obtained Clean Water Act Section 401 water quality certification and/or a Coastal Zone Management Act consistency concurrence, if required.

The site-specific environmental evaluation prepared by NRCS will address compliance with the Endangered Species Act and Section 106 of the National Historic Preservation Act. If the proposed activity may affect endangered or threatened species or will destroy or adversely modify critical habitat, NRCS will be the lead Federal agency responsible for Endangered Species Act Section 7 consultation. If the proposed activity has the potential to cause effects to historic properties, NRCS will be the lead Federal agency responsible for consultation under Section 106 of the National Historic Preservation Act.

Please note that several of the NRCS categorically excluded activities may not require Department of the Army authorization but are listed for consistency and to reduce confusion when referencing the CE numbers. Approval of the NRCS CEs for inclusion under NWP 23 provides further clarification to Corps and NRCS staff and a consistent mechanism to authorize these categorically excluded activities.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855), regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The proposed action will not substantially change paperwork burdens on the regulated public because many of the 26 categorically excluded activities may also be authorized by other nationwide permits, regional general permits, or individual permits that have similar paperwork requirements.

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 Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires on August 31, 2012).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we determined that this is not a "significant regulatory action" and therefore it is not subject to review under requirements of the Executive Order.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the Corps 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." The proposed action does not have federalism implications. We do not believe that the proposed action will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed action will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposed action.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

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 the proposed authorization on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed action on small entities, I certify that it will 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 agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed action 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, because the approval of these CEs for use with NWP 23 provides a less costly, more cost-effective, and less burdensome means of obtaining Department of the Army authorization for certain activities than obtaining an individual permit. Therefore, this proposal is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed action contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed action is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed approval of these CEs for use with NWP 23 is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, this proposed action does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." The proposed action does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Therefore, Executive Order 13175 does not apply to this proposal. However, in the spirit of Executive Order 13175, we specifically request comment from tribal officials on the proposed approval of these CEs for use with NWP 23.

Environmental Documentation

A decision document will be prepared for this action after the comment period has ended and all comments received have been evaluated. That decision document will be available in the regulations.gov docket for this action and through Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

The NRCS has adopted their CEs pursuant to the CEQ Regulation for Implementing the Procedural Provisions of NEPA (40 CFR part 1500 *et seq.*). The list of NRCS's CEs has been approved by the CEQ and was finalized by the NRCS.

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. We will submit a report containing the final decision concerning this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed authorization is not a "major rule" as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed authorization is not expected to negatively impact human health or the environment of any community, and therefore is not expected to cause any disproportionately high and adverse human health or environmental impacts to minority or low-income communities. The purpose of the authorization is to reducing duplicative Federal processes when another Federal agency has completed the NEPA analysis for an activity, and to expedite Department of the Army authorization for projects having no more than minimal adverse environmental affects either individually or cumulatively.

Executive Order 13211

The proposed approval of NRCS CEs under NWP 23 is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Authority

We are proposing to approve NRCS CEs for use with NWP 23, which was issued under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*)

List of NRCS Categorical Exclusions

NRCS Categorical Exclusions established under 7 CFR 650.6(a)(1–5):

(1) Soil Survey—7 CFR part 611.

(2) Snow Survey and Water Supply Forecasts—7 CFR part 612.

(3) Plant Materials for Conservation—7 CFR part 613.

(4) Inventory and Monitoring—Catalog of Federal Assistance 10.980

(5) River Basin Studies under Section 6 of Public Law 83–566 as amended—7 CFR part 621.

NRCS Categorical Exclusions established under 7 CFR 650.6(d)(1–21):

(1) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive

plants, on disturbed sites to restore and maintain the sites ecological functions and services.

(2) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances.

(3) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to pre-drainage conditions to the extent practicable.

(4) Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required.

(5) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes.

(6) Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety.

(7) Removing storm debris and sediment following a natural disaster where there is a continuing and eminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions to the extent practicable. Excavation will not exceed the pre-disaster condition.

(8) Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore pre-disaster conditions to the extent practicable, e.g., utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, rip-rap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(9) Repairing or maintenance of existing small structures or improvements (including structures and improvements utilized to restore disturbed or altered wetland, riparian, in stream, or native habitat conditions). Examples of such activities include the repair or stabilization of existing stream crossings for livestock or human passage, levees, culverts, berms, dikes, and associated appurtenances.

(10) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats. Examples of activities include: (1) Installation of fences, and (2) construction of small berms, dikes, and associated water control structures.

(11) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition.

(12) Repairing or maintenance of existing constructed fish passageways, such as fish ladders, or spawning areas impacted by natural disasters or human alteration.

(13) Repairing, maintaining, or installing fish screens to existing structures.

(14) Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result.

(15) Repairing or improving (deepening/widening/armoring) existing auxiliary/emergency spillways associated with dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result.

(16) Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to the embankment or abutment areas.

(17) Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of the embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards. The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure. Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result. Examples of work may include the addition of fill material, such as earth or gravel, or placement of parapet walls.

(18) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards.

(19) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: Mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes.

(20) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting.

(21) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices.

Reporting Requirement

The permittee must submit to the district engineer a copy of: (1) The site-specific environmental evaluation (NRCS–CPA–52) approved by NRCS staff for the project; (2) a vicinity map showing the location of the proposed activity; and (3) project plans. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Dated: May 6, 2011.

Michael G. Ensch,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2011–11831 Filed 5–12–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2011–0006]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter 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: The changes will be effective on June 13, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson (202) 685–6545, or Head, PA/FOIA at Department of the Navy, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. § 552a), as amended, has been published in the **Federal Register** and is available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a (r) of the Privacy Act of 1974, as amended, were submitted on May 9, 2011 to the House Committee on Government Report, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individual," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 9, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM06150–7

SYSTEM NAME:

Navy-Marine Corps Combat Trauma Registry (CTR) (July 9, 2007, 72 FR 37204).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Combat Trauma Registry Expeditionary Medical Encounter Database (CTR EMED)."

SYSTEM LOCATION:

Delete entry and replace with "Dept. 161, Naval Health Research Center (NHRC), 140 Sylvester Road, San Diego, CA 92106–3521."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All injury, disease, psychiatric, and sick call patients (active duty Army, Air Force, Navy, Marine Corps, Coast Guard, Reserve and National Guard,) initially treated at a deployed medical facility during military operations."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; OASD/HA Policy 04–031, Coordination of Policy to Establish a Joint Theater Trauma Registry; DoD 6025.18–R, DoD Health Information Privacy Regulation; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To create, populate, and maintain a computerized database of medical events associated with casualty care. From the point of injury (or disease event) through final rehabilitative outcome(s) for patients sick or injured while deployed; to track persons through the medical chain of evacuation; to relate outcomes with medical care received; and to track active duty personnel initially treated at these facilities throughout the medical chain of evacuation and on through long-term rehabilitative care."

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Delete entry and replace with "Records may be stored on paper and/ or electronic storage media."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are located in restricted areas accessible only to authorized personnel that are properly screened, cleared, and trained. Automated information is stored on a DoD password protected network. Automated and manual records are available only to authorized personnel having a need-to-know."

RETENTION AND DISPOSAL:

Delete entry and replace with "Non-Record Copies of Health and Medical Record Files: Destroy when 1 year old or purpose is served, whichever is earlier.

Medical and Development Project Files: Permanent. Offer to National Archives and Records Administration (NARA) when 20 years old."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official: Commanding Officer, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92116–3521.

Record Holder: Principal Investigator, CTR Expeditionary Medical Encounter Database, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92106–3521."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Principal Investigator, CTR Expeditionary Medical Encounter Database, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92106–3521.

The request should include the individual's full name, Social Security Number (SSN), complete mailing address, and must be signed by the service member requesting the information.

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."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records

about themselves contained in this system of records should address written inquiries to the Principal Investigator, CTR Expeditionary Medical Encounter Database, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92116–3521.

The request should include the individual's full name, Social Security Number (SSN), complete mailing address, and must be signed by the service member requesting the information.

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."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual theater medical registry forms; medical records at Landstuhl Regional Medical Center, Germany (LRMC); National Naval Medical Center, Bethesda (NNMC); autopsy records at Armed Forces Institute of Pathology, Washington, DC (AFIP); Career History Archival Medical and Personnel System (CHAMPS); Civil Composite Health Care System (CHCS); Defense Enrollment Eligibility Reporting System (DEERS); Defense Manpower Data Center (DMDC), Joint Theater Trauma Registry (JTTR); and TRICARE Management Activity (TMA)."

* * * * *

NM06150–7

SYSTEM NAME:

Combat Trauma Registry Expeditionary Medical Encounter Database (CTR EMED).

SYSTEM LOCATION:

Dept 161, Naval Health Research Center (NHRC), 140 Sylvester Road, San Diego, CA 92106–3521.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All injury, disease, psychiatric, and sick call patients (active duty Army, Air Force, Navy, Marine Corps, Coast Guard, Reserve and National Guard,) initially treated at a deployed medical facility during military operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic and health data related to the injury, disease or psychiatric event incurred. Demographic data includes individual's name, Social Security Number (SSN), rank, unit, date of birth, gender. Event data includes mechanism of injury, personal protective equipment, date and times of injury, and arrival to the treatment facility. Health data includes anatomical location of injury, vital signs, diagnosis, treatment, procedures, operative notes, disposition, outcomes, and quality of life indicators.

Health data are collected from clinical encounters, from the point of injury (or disease event) through long-term rehabilitative care.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; OASD/HA Policy 04–031, Coordination of Policy to Establish a Joint Theater Trauma Registry; DoD 6025.18–R, DoD Health Information Privacy Regulation; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To create, populate, and maintain a computerized database of medical events associated with casualty care. From the point of injury (or disease event) through final rehabilitative outcome(s) for patients sick or injured while deployed; to track persons through the medical chain of evacuation; to relate outcomes with medical care received; and to track active duty personnel initially treated at these facilities throughout the medical chain of evacuation and on through long-term rehabilitative care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system, except as identified below.

Note 1: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

Note 2: Personal identity, diagnosis, prognosis or treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, except as provided in 42 U.S.C. 290dd–2, will be treated as confidential and will be disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2. The DoD "Blanket Routine Uses" do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Records may be stored on paper and/or electronic storage media.

RETRIEVABILITY:

Individual's name and Social Security Number (SSN).

SAFEGUARDS:

Records are located in restricted areas accessible only to authorized personnel that are properly screened, cleared, and trained. Automated information is stored on a DoD password protected network. Automated and manual records are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Non-Record Copies of Health and Medical Record Files: Destroy when 1 year old or purpose is served, whichever is earlier.

Medical and Development Project Files: Permanent. Offer to National Archives and Records Administration (NARA) when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commanding Officer, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92116–3521.

Record Holder: Principal Investigator, CTR Expeditionary Medical Encounter Database, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92106–3521.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Principal Investigator, CTR Expeditionary Medical Encounter Database, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92106–3521.

The request should include the individual's full name, Social Security Number (SSN), complete mailing address, and must be signed by the service member requesting the information.

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.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Principal Investigator, CTR Expeditionary Medical Encounter Database, Naval Health Research Center, 140 Sylvester Road, San Diego, CA 92116–3521.

The request should include the individual's full name, Social Security Number (SSN), complete mailing address, and must be signed by the service member requesting the information.

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.

RECORD SOURCE CATEGORIES:

Individual theater medical registry forms; medical records at Landstuhl Regional Medical Center, Germany (LRMC); National Naval Medical Center, Bethesda (NNMC); autopsy records at Armed Forces Institute of Pathology, Washington DC (AFIP); Career History Archival Medical and Personnel System (CHAMPS); Civil Composite Health Care System (CHCS); Defense Enrollment Eligibility Reporting System (DEERS); Defense Manpower Data Center (DMDC), Joint Theater Trauma Registry (JTTR); and TRICARE Management Activity (TMA).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–11769 Filed 5–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanics

AGENCY: U.S. Department of Education, White House Initiative on Educational Excellence for Hispanics.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and agenda of the first meeting of the President's Advisory Commission on Educational Excellence for Hispanics. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: Thursday, May 26, 2011, and Friday, May 27, 2011.

Time: 1–5 p.m., Thursday, May 26, and 9 a.m.–5 p.m., Friday, May 27.

ADDRESSES: The Commission will meet at the Eisenhower Executive Office Building (EEOB), in Washington, District of Columbia, Room 430 A–B, 1600 Pennsylvania Avenue, Washington, DC 20202, 202–401–1411.

FOR FURTHER INFORMATION CONTACT: Glorimar Maldonado, Chief of Staff, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave., SW., Room 4W110, Washington, DC 20202; telephone: 202–401–1411 or 202–401–0078.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

Agenda

The Commission will discuss possible strategies to meet its duties under its charter.

Individuals who will need accommodations in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Glorimar Maldonado, Chief of Staff, White House Initiative on Educational Excellence for Hispanics at 202–401–1411 or 202–401–0078, no later than Monday, May 23, 2011. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals who wish to attend the Commission meetings must RSVP by noon EDT, Friday, May 20, to the White House Initiative staff at 202–453–6347. Due to space limitations, RSVPs are required by the due date. Members of the public must RSVP by the due date.

An opportunity for public comment is available throughout the day on Thursday, May 26, 2011, from 1–5 p.m., and Friday, May 27, 2011, from 9 a.m. to 5 p.m. Individuals who wish to provide comments will be allowed three minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Glorimar Maldonado, White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave., SW., Room 4W110, Washington, DC 20202, by Wednesday, May 25, 2011. The meeting proceedings will be webcast at *http://www.whitehouse.gov/live.*

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave., SW., Room 4W108, Washington, DC 20202, Monday through Friday (excluding federal holidays) during the hours of 9 a.m. to 5 p.m.

Electronic Access to the Document: You may 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) on the Internet at the following site: *http://www.ed.gov/fedregister/index.html.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. For questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at 202–512–0000.

Martha Kanter,

Under Secretary, Department of Education.

[FR Doc. 2011–11690 Filed 5–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–725B–001]

Commission Information Collection Activities (FERC–725B); Comment Request; Submitted for OMB Review; Extension

On March 31, 2011, the Commission issued a Notice in Docket No. IC11–725B–001 (FR Doc. 2011–8248, published on April 7, 2011 at 76 FR 19333) which established a public comment period that was set to end on May 9, 2011. This notice extends the comment period deadline to and including June 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11236 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–600–000]

Commission Information Collection Activities (FERC–600); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due July 12, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC11–600–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC11–600. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–600, "Rules of Practice and Procedure: Complaint Procedures" (OMB Control No. 1902–0180), is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 791a–825r; the Natural Gas Act(NGA), 15 U.S.C. 717–717w; the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601–2645; the Interstate Commerce Act, 49 U.S.C. App. 1 *et seq.,* the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356 and the Energy Policy Act of 2005, (Pub. L. 109–58) 119 Stat. 594.

With respect to the natural gas industry, section 14(a) of the NGA provides: The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

For public utilities, section 205(e) of the FPA provides: Whenever any such new schedule is filed, the Commission shall have the authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and decision of the Commission. * * *

Section 215(d)(5) of the FPA provides: The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section. * * *

Concerning hydropower projects, section 19 of the FPA provides: * * * it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control. * * *

For qualifying facilities, section 210(h)(2)(B) of PURPA provides: Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph.

Likewise for oil pipelines, Part 1 of the Interstate Commerce Act (ICA), sections 1, 6 and 15 (recodified by Pub. L. 95–473 and found as an appendix to Title 49 U.S.C.) the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If a proposed oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA provided that: Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to the Commission by petition which shall briefly state the facts: whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. * * *

In Order No. 602, 64 FR 17087 (April 8, 1999), the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to

encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve the latter, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR 385.206) to require that a complaint satisfy certain informational requirements, that answers be filed in a shorter, 20-day time frame, and that parties may employ various types of alternative dispute resolution procedures to resolve complaints.

In Order No. 647, 69 FR 32436 (June 10, 2004), the Commission revised its regulations to simplify the formats it requires for various types of notices. These revisions provide for a more uniform formatting and make it easier for the Commission to update the form of notice formatting without the necessity of initiating a rulemaking for every change. A new subsection 18 CFR 385.203(d) replaced the former format requirements. Among the provisions that were affected by these revisions was 18 CFR 385.206(b)(10).

On October 30, 2008, the Office of Management and Budget (OMB) approved the reporting requirements contained in FERC–600 for a term of three years, the maximum period permissible under the Paperwork Reduction Act [1] before an information collection must be resubmitted for approval. As noted above this notice seeks public comments in order for the Commission to submit a justification to OMB to approve and extend the current expiration date of the FERC–600 reporting requirements. The data in complaints filed by interested/affected parties regarding oil and natural gas pipeline operations, electric and hydropower facilities in their applications for rate changes, service, licensing or reliability are used by the Commission in establishing a basis for various investigations and to make an initial determination regarding the merits of the complaint.

Investigations may range from whether there is undue discrimination in rates or service to questions regarding market power of regulated entities to environmental concerns. In order to make a better determination, it is important to know the specifics of any oil, gas, electric, and hydropower complaint "upfront" in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data will help the Commission and interested parties to monitor the market for exercises of market power or undue discrimination. The information is voluntary but submitted with prescribed filing requirements. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 343, and 385, 385.206, 385.203 and 385.213.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Data collection	Number of respondents [2] (1)	Average number of responses per respondent (2)	Average number of burden hours per response (3)	Total annual hours (1)×(2)×(3)
FERC–600	88	1	14	1,232

[2] This is a three year average of the number of respondents (2008–2010).

Estimated cost burden to respondents is $84,328 (1,232 hours/2080 hours per year times $142,372 per year average per employee = $84,328). The cost per respondent is $958. There is a slight increase in the average number of respondents and number of filings since the last renewal request (in 2008, the average number of respondents was 81). The cost per respondent has increased to reflect adjustments due to inflationary costs.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11755 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3501–3520.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–041]

Progress Energy Carolinas, Inc.; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2206–041.

c. *Date Filed:* March 29, 2011.

d. *Applicant:* Progress Energy Carolinas, Inc.

e. *Name of Project:* Yadkin-Pee Dee Hydroelectric Project.

f. *Location:* The Pee Dee River in Stanly County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Larry Mann, Progress Energy Carolinas, Inc., Tillery Hydro Plant, 179 Tillery Dam Road, Mount Gilead, NC 27306. (919) 546–5300.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 6, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. *To paper-file, an original and seven copies should be mailed to:* Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–2206–041) on any comments or motions filed.

k. *Description of Application:* Progress Energy Carolinas, Inc. requests after-the-fact Commission approval to grant Edgewater Developers, Inc. (permittee) a lease of project lands and waters for the continued use of an existing boat launch and an existing boat dock with 10 slips at Lake Tillery. The boat launch and dock serve the residents of the Edgewater subdivision.

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 (P–2206) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *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:* Any filing must (1) Bear in all capital letters the title "Comments", "Protest", or "Motion to Intervene" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11734 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–291–000]

El Paso Natural Gas Company; Notice of Application

On April 26, 2011, El Paso Natural Gas Company (El Paso), P.O. Box 1087, Colorado Springs, CO 80944, filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(b) of the Natural Gas Act (NGA) and Part 157.5 of the Commission's regulations, requesting authorization to abandon in place a compressor unit, with appurtenances, at El Paso's Monument Compressor Station located in Lea County, New Mexico. Specifically, El Paso is seeking to abandon Unit 2B since it has become functionally obsolete and is no longer needed to provide natural gas transportation service. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Questions regarding the application may be directed to Susan C. Stires, Director, Regulatory Affairs, Rates & Certificates, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, CO 80944, at (719) 667–7514 (phone), (719) 667–7534 (fax), or *EPNGRegulatoryAffairs@elpaso.com* or to Craig V. Richardson, Vice President and General Counsel, El Paso Natural

Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, at (719) 520–4534 (phone) or (719) 520–4415 (fax), or *EPNGLegalFERC@elpaso.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s).

Comment Date: 5 p.m. Eastern Time on May 27, 2011.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11740 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–102–002]

NorthWestern Corporation; Notice of Baseline Filing

Take notice that on May 5, 2011, NorthWestern Corporation submitted a revised baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, May 13, 2011.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11738 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 9, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–81–000.

Applicants: Long Island Solar Farm, LLC.

Description: Exempt Wholesale Generator Request of Long Island Solar Farm, LLC.

Filed Date: 05/06/2011.

Accession Number: 20110506–5048.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2500–002.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35: Baseline Compliance Filing APS Tariff Volume No. 2 to be effective 8/31/2010.

Filed Date: 05/06/2011.

Accession Number: 20110506–5085.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–2895–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits tariff filing per 35.17(b): Supplement to Rate Case to be effective 6/1/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5069.

Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–2896–001.

Applicants: NorthWestern Corporation.

Description: Refund Report of Northwestern Corporation.

Filed Date: 05/06/2011.

Accession Number: 20110506–5193.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3366–001.

Applicants: Wildcat Power Holdings, LLC.

Description: Wildcat Power Holdings, LLC submits tariff filing per 35.17(b): Wildcat Power Holdings LLC to be effective 5/6/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5001.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3535–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: U3–029 & U3–030—Original Service Agreement No. 2863 to be effective 4/6/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5147.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3537–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of PJM Interconnection, L.L.C.

Filed Date: 05/06/2011.

Accession Number: 20110506–5191.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 9, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–11802 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3034–000.

Applicants: ISO New England Inc.

Description: Errata to Informational Filing for Qualification in the Forward Capacity Market of ISO New England Inc.

Filed Date: 05/06/2011.

Accession Number: 20110506–5107.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 11, 2011.

Docket Numbers: ER11–3521–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W3–026; Original Service Agreement No. 2855 to be effective 4/6/2011.

Filed Date: 05/05/2011.

Accession Number: 20110505–5015.

Comment Date: 5 p.m. Eastern Time on Thursday, May 26, 2011.

Docket Numbers: ER11–3522–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35.13(a)(2)(iii: PNM LGIP Filing to be effective 7/5/2011.

Filed Date: 05/05/2011.

Accession Number: 20110505–5074.

Comment Date: 5 p.m. Eastern Time on Thursday, May 26, 2011.

Docket Numbers: ER11–3523–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Construction Services Agreement between NiMo and Churchville to be effective 4/27/2011.

Filed Date: 05/05/2011.

Accession Number: 20110505–5081.

Comment Date: 5 p.m. Eastern Time on Thursday, May 26, 2011.

Docket Numbers: ER11–3524–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 143 under Florida Power Corporation OATT to be effective 5/18/2011.

Filed Date: 05/05/2011.

Accession Number: 20110505–5119.

Comment Date: 5 p.m. Eastern Time on Thursday, May 26, 2011.

Docket Numbers: ER11–3525–000.

Applicants: Round Rock Energy LLC.

Description: Round Rock Energy LLC submits tariff filing per 35.15: Notice of Cancellation of MBR Tariff for Round Rock Energy, LLC to be effective 5/6/2011.

Filed Date: 05/05/2011.

Accession Number: 20110505–5131.

Comment Date: 5 p.m. Eastern Time on Thursday, May 26, 2011.

Docket Numbers: ER11–3526–000.

Applicants: Round Rock Energy LP.

Description: Round Rock Energy LP submits tariff filing per 35.15: Notice of Cancellation of Market-Based Rate Tariff for Round Rock Energy, LP to be effective 5/6/2011.

Filed Date: 05/05/2011.

Accession Number: 20110505–5144.

Comment Date: 5 p.m. Eastern Time on Thursday, May 26, 2011.

Docket Numbers: ER11–3527–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W3–038; Original Service Agreement No. 2856 to be effective 4/6/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5030.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3528–000.

Applicants: Dynegy Midwest Generation, Inc.

Description: Dynegy Midwest Generation, Inc. submits tariff filing per 35.13(a)(2)(iii: Revised Reactive Service Rate Schedule to be effective 4/1/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5075.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3529–000.

Applicants: PJM Interconnection, L.L.C., Baltimore Gas and Electric Company.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Second Revised Service Agreement 871 between BG&E and Constellation Power to be effective 6/6/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5080.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3530–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Information Policy Revisions to be effective 6/20/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5086.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3531–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 05–06–11 ATC Schedule 9 revisions to be effective 7/6/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5087.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3532–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: V4–006, V4–007, V4–030 and V–031, Original Service Agreement No. 2861 to be effective 4/6/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5091.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3533–000.

Applicants: Xcel Energy Services Inc.

Description: Notice of Termination of Various Service Agreements filed by Xcel Energy Services Inc. on behalf of Southwestern Public Service Company.

Filed Date: 05/06/2011.

Accession Number: 20110506–5103.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Docket Numbers: ER11–3534–000.

Applicants: Enjet, Inc.

Description: Enjet, Inc. submits tariff filing per 35.15: Tariff Cancellation to be effective 5/7/2011.

Filed Date: 05/06/2011.

Accession Number: 20110506–5116.

Comment Date: 5 p.m. Eastern Time on Friday, May 27, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 6, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–11806 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–39–000]

Gregory R. Swecker, Beverly F. Swecker v. Midland Power Cooperative, State of Iowa; Notice of Complaint

Take notice that on May 6, 2011, pursuant to section 210(h)(2)(A) of the Public Utility Regulatory Policies Act of 1978 (PURPA),[1] Gregory R. Swecker and Beverly F. Swecker (Complainants) filed a petition requesting that the Federal Energy Regulatory Commission (Commission) enforce the requirements of PURPA against Midland Power Cooperative and the State of Iowa (Respondents), alleging that Respondents have failed to implement the Commission regulations by acting in direct contravention of said statutes, rules, orders and other laws

[1] 16 U.S.C. 824a–3(h)(2) (2006).

administered by the Commission and the US Supreme Court.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 26, 2011.

Dated: May 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11758 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF10–20–000]

Sawgrass Storage LLC; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Planned Sawgrass Storage Project and Request for Comments on Environmental Issues

As previously noticed on August 6, 2010, and supplemented herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental assessment (EA) that will discuss the environmental impacts that could result from the construction and operation of the Sawgrass Storage Project. The project is planned by Sawgrass Storage LLC (Sawgrass) to provide flexible storage services on various interstate and intrastate pipeline systems, and provide supplemental natural gas supply during periods of peak natural gas usage. The project would be located in Lincoln and Union Parishes, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This Supplemental Notice of Intent (NOI) announces the opening of an additional scoping period the Commission will use to gather input from the public and interested agencies on the revised project. Specifically, Sawgrass has revised its project to eliminate approximately 20.5 miles of pipeline, a second compressor station, 8 pipeline interconnects, and 3 mainline valves, which were included in its original project design. Your input on the revised project will help determine what issues need to be evaluated in the EA. Please note that this additional scoping period will close on June 6, 2011.

This notice is being sent to the Commission's current environmental mailing list for this project. The mailing list includes landowners who would be affected by Sawgrass' revised project and those that would no longer be affected by the reduced project facilities. State and local government representatives are asked to notify their constituents of the new planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Sawgrass plans to request authorization to construct and operate an underground natural gas storage facility with a working gas capacity of 30 billion cubic feet.

The Sawgrass Storage Project would now consist of the following facilities:

- A storage reservoir in a depleted gas production field;
- 5 wellpads with up to 16 horizontally drilled wells;
- 5 observation wells;
- Approximately 5.5 miles of 20- and 24-inch-diameter gathering pipeline;
- A compressor station with approximately 19,000 horsepower of compression;
- Approximately 13.8 miles of 30-inch-diameter mainline pipeline;
- 2 mainline valves;
- An interconnect with the existing Midcontinent Express Pipeline interstate pipeline system; and
- Appurtenant facilities.

Sawgrass' proposed storage field would essentially remain the same as originally proposed, along with the first approximately 10 miles of 30-inch-diameter mainline pipeline. There is approximately 3.8 miles of additional 30-inch-diameter pipeline that was re-routed from the original alignment and would affect new landowners. Sawgrass has eliminated approximately 13.7 miles of 30-inch-diameter mainline pipeline, both 24-inch-diameter header pipelines, and the second compressor station located along the 24-inch-diameter header pipeline.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb about 409.4 acres of land for the aboveground facilities and the pipelines. Following construction, about 156.1 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this supplemental NOI, the Commission requests public comments on the scope of the issues to address in the EA regarding the revised project. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have contacted federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA. Representatives from the FERC also participated in public open houses sponsored by Sawgrass in the project area in July 2010, to explain the environmental review process to interested stakeholders.

Our independent analysis of the issues will be presented in the EA. The EA will be published and mailed to the entities on our mailing list (see discussion on how to remain on our list under Environmental Mailing List below). A 30-day comment period will be allotted for review of the EA. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section on page 5.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we used our original notice, issued August 6, 2010, to initiate consultation with the Louisiana State Historic Preservation Office (SHPO), and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. If you previously submitted comments in response to the original notice, you do not need to re-submit those comments. Your comments will be considered in our environmental analysis. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before June 6, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF10–20–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; local libraries and newspapers; and anyone who submits comments on the project. 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, who own homes within certain distances of aboveground facilities, and those that would no longer be affected by the revised pipeline route and second compressor station. We will

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

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 planned project. If you previously returned an Information Request from the initial notice or submitted a comment on the project, you are and will remain on our mailing list.

Copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once Sawgrass files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

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 (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF10–20). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, to request additional information on the project or to provide comments directly to the project sponsor, you can contact Sawgrass directly by calling toll free at 877–309–8624. Also, Sawgrass has established a Web site at *http://www.sawgrassgas.com.* The Web site includes a description of the project, an overview map of the planned facilities, and links to related documents. Sawgrass will update the Web site as the environmental review of the project proceeds.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11737 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2850–015 New York]

Hampshire Paper Company, Inc.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Emeryville Hydroelectric Project, located on the Oswegatchie River in St. Lawrence County, New York, and has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

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, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, *mail an original and seven copies to:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For further information, contact John Baummer at (202) 502–6837.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11736 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–001]

Increasing Market and Planning Efficiency Through Improved Software; Notice of Technical Conference: Increasing Real-Time and Day-Ahead Market Efficiency Through Improved Software

Take notice that Commission staff will convene a technical conference on June 28–30, 2011, from 8:30 a.m. to 4:30 p.m., to discuss opportunities for increasing real-time and day-ahead market efficiency through improved software.

This conference will bring together diverse experts from ISOs/RTOs, non-

market utilities, the software industry, government, research centers and academia for the purposes of stimulating discussion and sharing of information about the technical aspects of these issues and identifying fruitful avenues for research. This conference is intended to build on the discussions initiated in the Commission's June 2010 staff technical conferences on increasing market and planning efficiency through improved software. As a result of the June 2010 conferences and progress over the past year, Commission staff is focusing in this conference on the following specific topics.

On June 28–29, presentations will focus on improving performance of day-ahead markets, including general unit-commitment software and algorithm advancements, asset flexibility, potential improvements to pricing, efficient modeling of uncertainty, optimal transmission switching, and large-scale test problem development, as well as other related topics.

On June 29–30, presentations will focus on improving performance of real-time optimal power flow modeling, including general real-time optimal power flow software and algorithm advancements, adaptive transmission ratings and generator modeling, full or partial AC optimal power flow models, preventive and corrective resource and transmission dispatch, improved regulation services, dynamic line ratings, and large-scale test problem development, as well as other related topics.

Through these presentations, Commission staff seeks to explore advancements related to these technologies, the potential benefits or costs associated with these advancements, and how such advancements may be incorporated into power market operations.

The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested participants are invited to attend, and participants with ideas for relevant presentations are invited to nominate themselves to speak at the conference.

Speaker nominations must be submitted on or before May 26, 2011 through the Commission's Web site [1] by providing the proposed speaker's contact information along with a title and abstract of the proposed presentation. Proposed presentations should be directly or closely related to the topics discussed above. Speakers and presentations will be selected to ensure relevant topics and to accommodate time constraints.

Although registration is not required for general attendance, we encourage those planning to attend the conference to register through the Commission's Web site.[2] We will provide printed nametags for those who register on or before June 23, 2011.

A detailed agenda with the list of and times for the selected speakers will be published on the Commission's Increasing Market and Planning Efficiency Web site [3] by May 31, 2011. Following the conferences, a comment date will be set for the filing of post-conference comments.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

A free webcast of this event will be available through the FERC Web site. Webcast viewers will not be able to participate during the technical conference. Anyone with Internet access interested in viewing the webcast of this conference can do so by navigating to Calendar of Events at *http://www.ferc.gov.* The events will contain a link to the Webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov.*

Eric Krall (Technical Information), Office of Energy Policy and Innovation, (202) 502–6214, *Eric.Krall@ferc.gov.*

Tom Dautel (Technical Information), Office of Energy Policy and Innovation, (202) 502–6196, *Thomas.Dautel@ferc.gov.*

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11739 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

[1] The speaker nomination form is located at *http://www.ferc.gov/whats-new/registration/improve-soft-06-28-speaker-form.asp.*

[2] The registration form is located at *http://www.ferc.gov/whats-new/registration/improve-soft-06-28-form.asp.*

[3] *http://www.ferc.gov/industries/electric/indus-act/market-planning.asp.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–522; Project No. 516–459]

Duke Energy Carolinas, LLC, South Carolina Electric & Gas Company; Notice of Meetings

On March 18, 2011, the National Marine Fisheries Service (NMFS) requested a meeting with Duke Energy Carolinas, LLC (Duke), licensee for the Catawba-Wateree Hydroelectric Project No. 2232, and Commission staff to discuss information needed to complete formal consultation for shortnose sturgeon (*Acipenser brevirostrum*) under section 7 of the Endangered Species Act. NMFS requested a similar meeting with South Carolina Electric & Gas Company (SCE&G), licensee for the Saluda Hydroelectric Project No. 516, and Commission staff on March 25, 2011.

Accordingly, Commission staff will meet with representatives of NMFS and Duke, the Commission's non-federal representative for the Catawba-Wateree Project, on Tuesday, May 24, 2011. Similarly, Commission staff will meet with representatives of NMFS and SCE&G, the Commission's non-federal representative for the Saluda Project, on Wednesday, May 25, 2011. Both meetings will start at 9 a.m. at NMFS' office at 253 13th Avenue South, St. Petersburg, Florida. All local, state, and federal agencies, and interested parties, are hereby invited to attend and observe either, or both, meeting(s). Questions concerning these meetings should be directed to Ms. Karla Reece of NMFS at (727) 824–5348.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11735 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 503–048–ID]

Swan Falls Hydroelectric Project, Idaho Power Company; Notice of Teleconference

a. *Date and Time of Meeting:* Tuesday, May 24, 2011 at 10 a.m. (Mountain Time).

b. *Place:* By copy of this notice we are inviting all interested parties to attend a teleconference from their location.

c. *FERC Contact:* Dianne Rodman, (202) 502–6077: *dianne.rodman@ferc.gov.*

d. *Purpose of the Meeting:* Commission staff will be meeting with the staff of the U.S. Fish and Wildlife Service and Idaho Power Company as part of its on-going section 7 Endangered Species Act consultation efforts.

e. All local, state, and federal agencies, Indian tribes, and interested parties are hereby invited to listen in on the teleconference. The phone number and passcode to the teleconference will be provided upon a request made by interested parties to Dianne Rodman. All requests for the teleconference phone number and passcode must be made no later than 2:30 p.m. (Mountain Time), May 20, 2011.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11733 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation, Member Representatives Committee and Board of Trustees Meetings.

Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

May 10 (1 p.m.—5 p.m.) and 11 (8 a.m.—1p.m.), 2011.

Further information regarding these meetings may be found at: *http://www.nerc.com/calendar.php.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC08–5, North American Electric Reliability Corporation.

Docket No. RC11–1, North American Electric Reliability Corporation.

Docket No. RC11–2, North American Electric Reliability Corporation.

Docket No. RR08–4, North American Electric Reliability Corporation.

Docket No. RR09–6, North American Electric Reliability Corporation.

Docket No. RR10–11, North American Electric Reliability Corporation.

Docket No. RR10–12, North American Electric Reliability Corporation.

Docket No. RR11–1, North American Electric Reliability Corporation.

Docket No. RD09–7, North American Electric Reliability Corporation.

Docket No. RD09–11, North American Electric Reliability Corporation.

Docket No. RD10–2, North American Electric Reliability Corporation.

Docket No. RD10–4, North American Electric Reliability Corporation.

Docket No. RD10–6, North American Electric Reliability Corporation.

Docket No. RD10–8, North American Electric Reliability Corporation.

Docket No. RD10–10, North American Electric Reliability Corporation.

Docket No. RD10–14, North American Electric Reliability Corporation.

Docket No. RD11–1, North American Electric Reliability Corporation.

Docket No. RD11–3, North American Electric Reliability Corporation.

Docket No. NP10–160, North American Electric Reliability Corporation.

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11731 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Entergy Regional State Committee Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee Meeting.

May 19, 2011 (1 p.m.–5 p.m.).

May 20, 2011 (8 a.m.–12 p.m.).

MISO, 720 City Center Drive, Carmel, Indiana 46032.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. EL00–66	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL01–88	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL07–52	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL08–51	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL08–60	*Ameren Services Co.* v. *Entergy Services, Inc.*
Docket No. EL09–43	*Arkansas Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–50	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–61	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL10–55	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL10–65	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL11–34	Midwest Independent System Transmission Operator, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.

Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–1676	Entergy Services, Inc.
Docket No. ER10–2748	Entergy Services, Inc.
Docket No. ER11–2131	Entergy Arkansas, Inc.
Docket No. ER11–2132	Entergy Gulf States, Louisiana, LLC
Docket No. ER11–2133	Entergy Gulf States, Louisiana, LLC
Docket No. ER11–2134	Entergy Mississippi, Inc.
Docket No. ER11–2135	Entergy New Orleans, Inc.
Docket No. ER11–2136	Entergy Texas, Inc.
Docket No. ER11–2161	Entergy Texas, Inc.
Docket No. ER11–2562	Entergy Gulf States, Louisiana, LLC
Docket No. ER11–3156	Entergy Arkansas, Inc.
Docket No. ER11–3157	Entergy Arkansas, Inc.
Docket No. ER11–3201	Entergy Services, Inc.
Docket No. ER11–3274	Entergy Arkansas, Inc.
Docket No. ER11–3341	Entergy Gulf States, Louisiana, LLC

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: May 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11756 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12611–005]

Verdant Power, LLC; Notice of Staff Participation in Meeting

On May 24, 2011, Office of Energy Projects staff will participate by teleconference in a meeting with Verdant Power and state and federal agencies to discuss adaptive management strategies for the environmental monitoring and safeguard plans in licensing the Roosevelt Island Tidal Energy Project No. 12611.

For parties wishing to participate, details on the teleconference are provided below:

Date: May 24, 2011.

Time: 2 p.m.

Call-in Number: (877) 857–1347.

Meeting ID: 5140.

Password: 12611.

For Further Information Contact: Timothy Konnert at (202) 502–6359, or e-mail at *timothy.konnert@ferc.gov.*

Dated: May 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11754 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–35–000]

Edison Mission Holding Beach, LLC; Notice of Petition for Declaratory Order

Take notice that on April 27, 2011, pursuant to section 201(e) of the Federal Power Act (FPA), Edison Mission Holding Beach, LLC (EMHB) filed a petition for declaratory order requesting that the Federal Energy Regulatory Commission (Commission) disclaim jurisdiction over it and determine that it will not be a *public utility* as the term *public utility* is defined in FPA section 201(e), by virtue of EMHB's passive ownership of the boilers, steam turbines, and related equipment of two generating units (Units), that it will acquire from, and then lease back to their current owner, AES Huntington Beach, LLC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 27, 2011.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11741 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 14142–000

East Maui Pumped Storage Water Supply LCC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 1, 2011, East Maui Pumped Storage Water Supply LCC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the East Maui Pumped Storage Water Supply Project to be located on the Miliko Gulch, in Maui County, Hawaii. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or

otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project will consist of the following: (1) A 400-foot-long, 250-foot-high earthen dam impounding an upper reservoir with a 40-acre surface area and storage volume of 2,750 acre-feet; (2) a 15,600-foot-long, 5-foot-diameter steel penstock; (3) a 1,400-foot-long, 50-foot-high intermediate earthen dam impounding an intermediate reservoir with a 55-acre surface area and storage volume of 2,750 acre-feet; (4) a 800-foot-long, 200-foot-high intermediate earthen dam impounding a lower reservoir with a 50-acre surface area and storage volume of 5,000 acre-feet; (5) a 7,000-foot-long, 6-foot-diameter steel penstock; (6) a powerhouse containing two Francis-type pump units at 15-megawatts each; (7) a 11-mile-long, 138-kilovolt transmission line connecting to the InterIsland direct current transmission line. The estimated annual generation of the project would be 120 gigawatt-hours.

Applicant Contact: Mr. Bart M. O'Keeffe, East Maui Pumped Storage Water Supply LLC; P.O. Box 1916; Discovery Bay, CA 94505; *phone:* (925) 634–1550.

FERC Contact: Ian Smith; *phone:* (202) 502–8943.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14142–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11730 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–7–000]

TransCanada Keystone Pipeline, LP; Notice of Request for Waiver

Take notice that on May 2, 2011, TransCanada Keystone Pipeline, LP (TransCanada Keystone) filed a request for waiver of the requirement in 18 CFR 342.4(c) that it submit a verified statement in support of future changes to its committed rates.

TransCanada Keystone states that good cause exists to grant such a waiver because TransCanada Keystone's committed shippers have already agreed in writing to the changes TransCanada Keystone is contractually permitted to make to its committed rates, and the Commission has previously granted such a waiver under these circumstances.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 24, 2011.

Dated: May 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–11732 Filed 5–12–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9306–1]

Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Dates & Addresses: Open meeting notice; Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold their next open

meeting on Wednesday June 8, 2011 from 8 a.m. to 4 p.m. at the Almas Temple, located at 1315 K Street, NW., Washington, DC. Seating will be available on a first come, first served basis. The Economic Incentives and Regulatory Innovations subcommittee will meet on Tuesday June 7, 2011 from 8:30 a.m. to 12 p.m. The Permits, New Source Reviews and Toxics subcommittee will meet on Tuesday June 7, 2011 from approximately 1 p.m. to 3:30 p.m. The meetings will also be held at the Almas Temple in Washington, DC. In conjunction with the CAAAC meeting, the Clean Air Excellence Awards will be presenting from 4:30 p.m. to 6:30 p.m. also at the Almas Temple. The awards are also open to the public. The agenda for the CAAAC full committee meeting on June 8, 2011 will be posted on the Clean Air Act Advisory Committee Web site at *http://www.epa.gov/oar/caaac/.*

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by e-mail at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, FAX (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittees, please contact the following individuals: (1) Permits/NSR/Toxics—Liz Naess, (919) 541–1892; (2) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, (202) 564–1667; and (3) Mobile Source Technical Review—Elizabeth Etchells, (202) 564–1372. Additional information on these meetings, CAAAC, and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

For information on access or services for individuals with disabilities, please contact Mr. Pat Childers at (202) 564–1082 or *childers.pat@epa.gov.* To request accommodation of a disability, please contact Mr. Childers, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 10, 2011.

Pat Childers,

Designated Federal Official, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. 2011–11828 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9305–3]

State Program Requirements; Application for Program Revision to the National Pollutant Discharge Elimination System (NPDES) Program; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA approved Alaska's National Pollutant Discharge Elimination System (NPDES) program application on October 31, 2008 pursuant to section 402 of the Clean Water Act (CWA or "the Act"). The approved State program, called the Alaska Pollutant Discharge Elimination System (APDES), includes an implementation plan that transfers the administration of specific program components from EPA to the Alaska Department of Environmental Conservation (ADEC) in four phases over a three year period from the date of program approval. Phases I–III have been transferred from EPA to ADEC. Transfer of the final phase, Phase IV, is currently scheduled for October 31, 2011. ADEC has made a submission for approval for a one year extension of the transfer of Phase IV of the APDES program, which includes oil and gas, cooling water intakes and dischargers, munitions and all other remaining facilities not previously transferred in Phases I–III. If EPA approves the APDES program revision, Phase IV will transfer to ADEC four years from the date of program approval, or October 31, 2012. Today, EPA is requesting comments on the proposed one year extension and is providing notice of a public hearing and comment period on the proposal. The EPA Region 10 Regional Administrator will either approve or disapprove the APDES program revision after considering all comments received during the public comment period.

DATES: *Comments.* The public comment period on the ADEC submission seeking a one year extension of the transfer of Phase IV will be from the date of publication of this Notice until June 27, 2011. Comments must be received or post-marked by no later than midnight on June 27, 2011.

Public Hearing: EPA will hold a public hearing on June 13, 2011 from 6 p.m. until all testimony is heard or 9 p.m., whichever is earlier. The public hearing will be held in Anchorage, AK. See **SUPPLEMENTARY INFORMATION** for additional information.

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

Mail: Send paper copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW–130, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101–3140.

E-mail: Send electronic copies to *shaw.hanh@epa.gov.*

Fax: Fax copies to the attention of Hanh Shaw at (206) 553–0165.

Hand Delivery/Courier: Deliver copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW–130, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101–3140. Call (206) 553–1200 before delivery to verify business hours.

EPA requests that a duplicate copy of comments be sent to Theresa Svancara, *theresa.svancara@alaska.gov,* Alaska Department of Environmental Conservation, P. O. Box 111800, 410 Willoughby Avenue, Suite 303, Juneau, AK 99811–1800.

Viewing and/or Obtaining Copies of Documents. ADEC has submitted a modified program description and a modified memorandum of agreement (MOA) related to the proposed APDES program revision. There are a number of ways that you may obtain or view the submissions. (1) Copies of ADEC's submissions are available for inspection at the EPA Region 10 Library, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140; the library hours are 9 a.m. to noon and 1 p.m. to 4 p.m. Monday through Friday, except Federal holidays, telephone number (206) 553–1289. (2) Copies are available at the EPA, Region 10, Alaska Operations Office, 222 W 7th Avenue, #19, Room 537, Anchorage, AK 99513, during normal business hours; contact Cindi Godsey at (907) 271–6561. (3) The ADEC submissions can be viewed or downloaded from the EPA Web site *http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/apdes.* (4) ADEC will have copies of the submissions available for viewing Monday through Friday, 8:30 a.m. to 4:30 p.m., except Alaska holidays, at the following locations: 555 Cordova Street, Anchorage, AK 99501–2617; 410 Willoughby Avenue, Suite 303, Juneau, AK 99811–1800; and 610 University Drive, Fairbanks, AK 99709. (5) The ADEC submissions can be viewed or downloaded from the State of

Alaska Web site *http://www.dec.state.ak.us/water/npdes/index.htm.* (6) Part or all of the ADEC submissions may be copied at EPA or at ADEC. ADEC has no copy fee for 200 or fewer pages and charges .20 per page for more than 200 pages. (7) You may request a copy of all or parts of the ADEC submissions from EPA using the Freedom of Information Act (FOIA) request process. The procedures and costs associated with a FOIA request can be found at the EPA Web site *http://www.epa.gov/region10/foia.*

Location of Public Hearing: The public hearing will be held on June 13, 2011 at Dena'ina Center, Kahtnu Room, 600 W 7th Avenue, Anchorage, AK. See **SUPPLEMENTARY INFORMATION** for additional information.

FOR FURTHER INFORMATION CONTACT: Hanh Shaw, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Suite 900, Mail Stop OWW–130, Seattle, WA 98101–3140, (206) 553–0171, *shaw.hanh@epa.gov* or Cindi Godsey, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 222 W 7th Avenue, #19, Anchorage, AK 99513, (907) 271–6561, *godsey.cindi@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 402 of the CWA created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that EPA may approve a State to administer an equivalent state program provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements. The regulatory requirements for state program approval are set forth in 40 CFR part 123, and 40 CFR 123.21 lists the basic elements of an approvable application. The NPDES regulations, 40 CFR 123.62, also set forth procedures for revision of approved state programs.

EPA considers the program revision documents submitted by ADEC to be administratively complete at the time of this notice. EPA will not make a final decision on the APDES program revision until after considering all public comments provided during the public comment period and from the public hearing and completion of government to government Tribal consultations, as requested, with Federally recognized Tribes in Alaska.

EPA's approval of the APDES program application on October 31, 2008 authorized ADEC to assume responsibility for the NPDES program in four phases over three years from the date of APDES program approval. ADEC currently has permit administration authority for Phases I–III. These three phases cover the following major components: Phase I includes domestic discharges (excluding the bio-solids program), timber harvesting, seafood processing facilities and hatcheries; Phase II includes Federal facilities, stormwater program, pretreatment program, and miscellaneous non-domestic discharges; and Phase III includes mining. The ADEC phasing schedule authorizes the transfer of Phase IV three years from APDES program approval, or October 31, 2011. Phase IV components include oil and gas, cooling water intakes and dischargers, munitions, and all other remaining facilities not previously transferred in Phases I–III.

By letter dated March 14, 2011, ADEC proposed a delay of the Phase IV transfer for one year, or until October 31, 2012. ADEC also submitted a modified APDES program description and a modified Memorandum of Agreement (MOA) related to the APDES program revision. The program description and MOA submissions were modified to incorporate the proposed one year extension of the Phase IV transfer.

The APDES program description provides a narrative description of the scope, structure, coverage, and processes of the APDES program including a description of the ADEC organization and staffing and administrative procedures for the issuance of permits and administrative or judicial procedures for their review. The only changes being proposed to the program description relate to a one year extension for the transfer of the Phase IV program component and to update the Phase IV permit list. The MOA is a document signed by each agency, committing them to specific responsibilities relevant to the administration and enforcement of the APDES program. The MOA provides structure for ADEC's program management and EPA's program oversight. The only changes being proposed to the MOA relate to a one year extension for the transfer of the Phase IV program component. The ADEC Commissioner and the Regional Administrator will sign the modified MOA if the APDES program revision is determined by EPA to be approvable after all comments received during the comment period have been considered.

After close of the comment period and completion of consultations, the Regional Administrator will make a decision to approve or disapprove the APDES program revision based on the requirements of Section 402 of the CWA and 40 CFR part 123. If the Regional Administrator approves the APDES program revision, the Regional Administrator will so notify ADEC and sign the modified MOA. Notice would be published in the **Federal Register** and EPA would suspend issuance of NPDES permits in Phase IV in accordance with the approved modified schedule to transfer NPDES program authority for Phase IV. If the Regional Administrator disapproves the APDES program revision, the existing Phase IV transfer date (October 31, 2011) will be retained. ADEC will be notified of the reasons for disapproval and of any revisions or modifications to the program revision that are necessary to obtain approval.

Public Hearing Procedures. The public hearing will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to give written and/or oral comments for the official record. The following procedures will be used at the public hearing. (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 decision to approve the submitted APDES program revision to change the date for the transfer of Phase IV. (4) The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator. (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 time to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. (6) Hearing statements may be oral or written. Written copies of oral statements are urged for 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 proposed program revision 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 submitted APDES program revision.

Public Comment on the Program Revision. EPA and ADEC encourage public participation in this program revision process. EPA requests the public to review the program revision that ADEC has submitted and provide any comments relevant to the proposed one-year extension for transfer of Phase IV. EPA will consider all comments on the APDES program revision in its decision.

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 State of Alaska APDES program revision in accordance with 40 CFR 123.62.

Dated: May 5. 2011.

Dennis McLerran,

Regional Administrator, Region 10.

[FR Doc. 2011–11728 Filed 5–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8996–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 05/02/2011 through 05/06/2011.

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110140, Final EIS, USFS, OR, Fremont-Winema National Forests Invasive Plant Treatment, Propose to Treat up to 8,700 Acres of Invasive Plant Infestation Per Year, Klamath and Lake Counties, OR, *Review Period Ends:* 06/13/2011, *Contact:* Glen Westlund 541–883–6743.

EIS No. 20110141, Draft EIS, USFS, 00, Nationwide Aerial Application of Fire Retardant Project, Proposing to Continue the Aerial Application of Fire Retardant on National Forest System Lands, Implementation, *Comment Period Ends:* 06/27/2011, *Contact:* Glen Stein 208–869–5405.

EIS No. 20110142, Draft EIS, USA, 00, Fort Benning Training Land Expansion Program, to Reduce the Army's Training Land Shortfall, GA and AL, *Comment Period Ends:* 06/27/2011, *Contact:* Jill Reilly-Hauck 210–424–8346.

EIS No. 20110143, Final EIS, BLM, CA, Palen Solar Power Plant Project, Construction, Operation and Decommission a Solar Thermal Facility on Public Lands, Approval for Right-of-Way Grant, Possible California Desert Conservation Area Plan Amendment, Riverside County, CA, *Review Period Ends:* 06/13/2011, *Contact:* Allison Shaffer 760–833–7100.

EIS No. 20110144, Final EIS, USAF, NV, Nellis Air Force Base (AFB), Proposes to Base 36 F–35 Fighter Aircraft, Assigned to the Force Development Evaluation (FDE) Program and Weapons School (WS) Beddown, Clark County, NV, *Review Period Ends:* 06/13/2011, *Contact:* Nick Germanos 757764–9334.

Amended Notices

EIS No. 20110051, Draft EIS, USN, CA, Marine Corps Air Ground Combat Center Project, Land Acquisition and Airspace Establishment to Support Large-Scale MAGTF Live-Fire and Maneuver Training Facility, San Bernardino County, CA, *Comment Period Ends:* 05/26/2011, *Contact:* Chris Proudfoot 760–830–3764.

Revision of FR Notice Published 02/24/2011: Extending Comment Period from 04/11/2011 to 05/26/2011.

EIS No. 20110080, Draft EIS, USN, WA, Trident Support Facilities Explosives Handling Wharf (EHW–2), Construction and Operating, Naval Base Kitsap Banorg, Silverdale, WA, *Comment Period Ends:* 05/17/2011, *Contact:* Christine Stevenson 360–396–0080.

This document is available on the Internet at: *https://www.nbkeis.com/ehw/Welcome.aspx.*

Revision to FR Notice Published 03/18/2011: Extending Comment Period from 05/02/2011 to 05/17/2011.

Dated: May 10, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–11810 Filed 5–12–11; 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: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on 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 July 11, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission. To submit your PRA comments by e-mail send them to: *PRA @fcc.gov (mailto:PRA@fcc.gov).*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Paul Laurenzano, 202–418–1359 or via the Internet at *Paul.Laurenzano@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0760.

Title: 272 Sunset Order, WC Docket No. 06–120; Access Charge Reform, CC Docket No. 96–262 (First Report and Order); Second Order on Reconsideration and Memorandum Opinion and Order, and Fifth Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 17 respondents; 887 responses.

Estimated Time per Response: 3 hours–300 hours.

Frequency of Response: On occasion and one time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 201–205 and 303(r).

Total Annual Burden: 28,835 hours.

Total Annual Cost: $736,760.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension (no change in the reporting requirements). The Commission is reporting 1,513 hourly decrease adjustment in the total estimated burden hours and $36,160 increase adjustment in annual costs. These increase adjustments are due to an increase in the filing fee from $775 to $815; and correcting mathematical errors in the previous submission to the OMB.

The Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs receive pricing flexibility in the provision of interstate access services as competition for those services develops. Also, pursuant to the Section 272 Sunset Order, FCC 07–159, respondents are no longer required to comply with 47 U.S.C. 272 structural safeguards. As such, respondents must now file certifications with the Commission prior to providing contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule section 64.1903 separate affiliate for use in the provision of any in-region, long distance services that it provides service pursuant to that contract tariff to an unaffiliated customer.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–11692 Filed 5–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on 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 July 12, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission. To submit your PRA comments by e-mail *send them to: PRA @fcc.gov (mailto:PRA@fcc.gov).*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams at 202–418–2918 or via the Internet at *Cathy.Wlliams@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1080.

Title: Improving Public Safety Communications in the 800 MHz Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 1,450 respondents; 3,848 responses.

Estimated Time per Response: 1 hour to 10 hours.

Frequency of Response: On occasion and quarterly reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 251–254, 303, and 332.

Total Annual Burden: 16,988 hours.

Total Annual Cost: $37,600.

Privacy Act Impact Assessment: N/A

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension of this information collection. The Commission has adjusted its previous burden estimates by 11,288 hourly decrease and $24,800 decrease in annual costs.

The Commission has taken actions to immediately stem increasing instances of interference to 800 MHz public safety

communications systems as well as address the underlying cause of 800 MHz interference. The PRA burden involves the exchange of information to facilitate incumbent relocation. This information exchange is necessary to effectuate band reconfiguration, *i.e.,* to spectrally separate incompatible technologies, which is the underlying cause of interference to public safety. Overall the PRA burden is necessary to enable the Commission to determine the parties are acting in good faith resolving the 800 MHz public safety interference problem and to keep the 800 MHz transition moving efficiently.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–11693 Filed 5–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on 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 July 12, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via e-mail to *Nicholas-A.-Fraser@omb.eop.gov* and to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on 202–418–2918 or via e-mail to *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0434.

Title: 47 C.F.R. Section 90.20(e)(6), Stolen Vehicle Recovery System Requirements.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, local or tribal governments.

Number of Respondents: 3 respondents; 4 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

Total Annual Burden: 4 hours.

Total Annual Cost: $4,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 90.20(e)(6) requires that applicants for stolen vehicle recovery systems perform an interference analysis for each base station within 169 kilometers of a TV channel 7 transmitter to ensure that the system does not cause interference to TV channel 7 viewers. Applicants shall serve a copy of the analysis to the licensee of the affected TV Channel 7 transmitter upon filing the application with the Commission. The Commission is seeking to obtain the full three year clearance/approval for this collection of information from the Office of Management and Budget.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–11694 Filed 5–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Clarification of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Clarification of Statement of Policy for Section 19 of the Federal Deposit Insurance Act.

SUMMARY: The FDIC originally promulgated the Statement of Policy for Section 19 of the Federal Deposit Insurance Act (SOP) in December 1998. The FDIC, in 2007, issued a clarification to the SOP based on the 2006 amendment to Section 19 of the Federal Deposit Insurance Act which addressed institution-affiliated parties (IAPs) participating in the affairs of Bank Holding Companies, or Savings and Loan Holding Companies. The FDIC is restating that previous change to the SOP in a slightly modified form, and addressing certain other issues that have arisen in the FDIC's interpretation of the policy since its original publication. The FDIC is clarifying what the FDIC views as a complete expungement of a conviction, and the definition of *de minimis* offenses.

DATES: The change to the policy statement is effective May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Martin P. Thompson, Review Examiner (202) 898–6767, in the Division of Risk Management Supervision; or Michael P. Condon, Counsel, (202) 898–6536, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829, (FDI Act) prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party (IAP), owning or controlling, directly or indirectly an insured depository institution (insured institution), or

otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19. The FDIC's SOP was published in December 1998 (63 FR 66177) to provide the public with guidance relating to Section 19, and the application thereof.

The Financial Services Regulatory Relief Act of 2006, Public Law 109–351, § 710, modified Section 19 to include coverage of IAPs of Bank Holding Companies, and Savings and Loan Holding Companies. In response to this amendment of the statute, the FDIC amended the SOP by including a footnote which noted the authority of the Board of Governors of the Federal Reserve System (FRS) and the Office of Thrift Supervision (OTS) in regard to bank and savings and loan holding companies under Section 19. (72 FR 73823, December 28, 2007 with correction issued at 73 FR 5270, January 29, 2008). The FDIC is now eliminating the previous footnote, incorporating the change directly into the text of the SOP, and noting the coming transfer of authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–202, § 312 (2010) (Dodd-Frank) of savings and loan holding company jurisdiction to the Board of Governors of the Federal Reserve System. In addition, the FDIC is making certain clarifying changes regarding when an application for the FDIC's consent must be filed.

The SOP, as revised herein, will be on the FDIC's Web site at *http://www.fdic.gov.*

II. Clarifying Changes to the Statement of Policy

The SOP will be clarified in the following areas:

A. Scope of Section 19

Section 19 covers IAPs, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured institution. However, because of changes to Section 19, the FDIC has identified the possibility that any persons covered by Section 19, because they are participating in the affairs of an insured depository institution, may also be participating in the affairs of a bank or savings and loan holding company and, therefore, fall within the scope of the changes to Section 19 related to the supervision of individuals participating in bank and savings and loan holding companies. This potential requirement was noted in the previous amendment to the SOP. This change eliminates the previous footnote and places the discussion in the text of the SOP. Although jurisdiction under Section 19 for the purpose of granting consent for an individual to participate in the affairs of a bank or savings and loan holding company is currently vested in the FRS or OTS, respectively, the policy statement is clarified to note the authority to grant consent to participate in the affairs of a savings and loan holding company will change effective on the Transfer Date as that term is used in § 311 of Dodd-Frank.

B. Standards for Determining Whether an Application Is Required

(1) Convictions

This subsection has been changed to address the interpretation of what is a complete expungement, as that term is used in the SOP. Historically, it has been the FDIC's position that unless the expungement is complete, a section 19 application would be required. The FDIC is amending the SOP to explain that an expungement is complete, and thus an application will not be required, only if the records of conviction are not accessible by any party, including law enforcement, even by court order. In all other circumstances an application will be required.

B. (5) De minimis Offenses

The 1998 SOP created a category of covered offenses that it would deem to be *de minimis* due to the minor nature of the offenses and the low risk that the covered party would pose to an insured institution based on the conviction. Based on its experience in the processing and approving of numerous applications involving such minor crimes, the FDIC has recognized a category of offenses to which it would grant blanket approval under section 19 without the need to file an application. The FDIC is clarifying in two ways which offenses fall within the *de minimis* offenses exception of the SOP.

First is a change in the language in the SOP that addresses the maximum sentence, in terms of jail time and/or fine, which a party might face, based on the covered crime of which they are convicted, but where the offense would still be considered *de minimis.* The current language can be read not to allow the *de minimis* offense exception to apply if the potential sentence for the covered crime is one year and/or $1,000. The FDIC is clarifying this aspect of the SOP so that the *de minimis* offenses provision will apply if the potential sentence could be one year or less and/or $1,000 or less. The change will remove any uncertainty in the existing language, and will add greater clarity to the public and insured institutions in evaluating whether an application is necessary.

A second clarification addresses when an offense involves an insured depository institution or insured credit union. The current language can be read not to allow the *de minimis* exception to apply when the covered party was convicted of writing a check that was returned for insufficient funds (*i.e.* a bad check), since the process of writing a check which is dishonored for insufficient funds usually involves depositing the check into the banking system at some point. However, the FDIC has determined that a conviction for issuing a bad check that does not cause loss to an insured depository institution or insured credit union, may, in limited circumstances, be subject to the *de minimis* offense exception. Therefore, subject to meeting the other provisions of the *de minimis* offenses exception, the FDIC is clarifying the language to allow, in certain limited circumstances, convictions for insufficient funds checks (bad checks) to fit with the *de minimis* rule. If there is one conviction for issuing an insufficient funds check (bad check) based on one or more checks which have an aggregate face value of $1,000 or less, and no insured financial institution or insured credit union was a payee on any of the checks, the conviction will qualify under the *de minimis* offense exception, and a section 19 application will not be required.

III. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 ("PRA"), 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 currently valid Office of Management and Budget ("OMB") control number. These Amendments to the Statement of Policy for Section 19 of the FDI Act include clarification of reporting requirements in an existing FDIC information collection, entitled *Application Pursuant to Section 19 of the Federal Deposit Insurance Act* (3064–0018) that should result in a decrease in the number of applications filed. Specifically, the revised policy statement clarifies that the following two offenses are deemed de minimis due to the minor nature of the offenses and the low risk that the covered party would pose to an insured institution based on the conviction: Offenses that

were punishable by imprisonment for a term of one year or less and/or a fine of $1,000 or less, and for which the individual did not serve any time in jail; and, in certain limited circumstances, conviction of a crime based on the writing of a "bad" or insufficient funds check. By clarifying these provisions, the FDIC believes that there will be a reduction in the submission of applications in situations where blanket approval has been granted by virtue of the de minimis offenses section of the policy statement. This change in burden will be submitted to OMB as a non-significant, nonmaterial change to an existing information collection. The estimated new burden for the information collection is as follows:

Title: "Application Pursuant to Section 19 of the Federal Deposit Insurance Act."

Affected Public: Insured depository institutions and individuals.

OMB Number: 3064–0018.

Estimated Number of Respondents: 26.

Frequency of Response: On occasion.

Average Time per Response: 16 hours.

Estimated Annual Burden: 416 hours.

Comments are invited on:

(a) Whether this 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 methodologies and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(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; and

All comments will become a matter of public record. Comments may be submitted to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, 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 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment 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, Room 3208, Washington, DC 20503. All comments should refer to the "Application Pursuant to Section 19 of the Federal Deposit Insurance Act," OMB No. 3064–0018.

IV. Changes to FDIC Statement of Policy for Section 19

For the reasons set forth above, the FDIC hereby revises the FDIC Statement of Policy for Section 19 as follows:

1. Revise subsection *A. Scope of Policy,* first paragraph, and add a new paragraph after the first paragraph, to read:

Section 19 covers institution-affiliated parties, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured institution. This Statement of Policy applies only to insured institutions, their institution-affiliated parties, and those participating in the affairs of an insured depository institution. Therefore, all employees of an insured institution fall within the scope of section 19. In addition, those deemed to be de facto employees as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to section 19. Whether other persons who are not institution-affiliated parties are covered depends upon their degree of influence or control over the management or affairs of an insured institution. For example, section 19 would not apply to persons who are merely employees of an insured institution's holding company, but would apply to its directors and officers to the extent that they have the power to define and direct the policies of the insured institution. Similarly, directors and officers of affiliates, subsidiaries or joint ventures of an insured institution or its holding company will be covered if they are in a position to influence or control the management or affairs of the insured institution. Those who exercise major policymaking functions of an insured institution would be deemed participants in the affairs of that institution and covered by section 19. Typically, an independent contractor does not have a relationship with the insured institution other than the activity for which the insured institution has contracted. Under 12 U.S.C. 1813(u), independent contractors are institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured institution. In terms of participation, an independent contractor who influences or controls the management or affairs of the insured institution, would be covered by section 19. Further, "person" for purposes of section 19 means an individual, and does not include a corporation, firm or other business entity.

Individuals who file an application with the FDIC under the provisions of Section 19 who are participating in the affairs of a bank or savings and loan holding company may also have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. 1819(d) in the case of a bank holding company, and the Office of Thrift Supervision under 12 U.S.C. 1819(e), in the case of a savings and loan holding company until the Transfer Date as that term is used in the Dodd-Frank Wall Street Reform Act (Pub. L. 111–203, § 311, July 21 2010). Upon the Transfer Date applications related to savings and loan holding companies should be filed with the Board of Governors of the Federal Reserve System.

* * * * *

2. Revise subsection *B. Standards for Determining Whether an Application Is Required* to read:

* * * * *

(1) Convictions. There must be present a conviction of record. Section 19 does not cover arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. A conviction with regard to which an appeal is pending will require an application until or unless reversed. A conviction for which a pardon has been granted will require an application. A conviction which has been completely expunged is not considered a conviction of record and will not require an application. For an expungement to be considered complete, no one, including law enforcement, can be permitted access to the record even by court order under the state or federal law which was the basis of the expungement.

* * * * *

(5) *De minimis* Offenses. Approval is automatically granted and an application will not be required where the covered offense is considered *de minimis,* because it meets all of the following criteria:

- There is only one conviction or program entry of record for a covered offense;
- The offense was punishable by imprisonment for a term of one year or

less and/or a fine of $1,000 or less, and the individual did not serve time in jail;

• The conviction or program was entered at least five years prior to the date an application would otherwise be required; and

• The offense did not involve an insured depository institution or insured credit union.

A conviction or program entry of record based on the writing of a "bad" or insufficient funds check(s) shall be considered a *de minimis* offense under this provision even if it involved an insured depository institution or insured credit union if the following applies:

• All other requirements of the *de minimis* offense provisions are met;

• The aggregate total face value of the bad or insufficient funds check(s) cited in the conviction was $1,000 or less; and

• No insured depository institution or insured credit union was a payee on any of the bad or insufficient funds checks that were the basis of the conviction.

Any person who meets the foregoing criteria shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she intends to participate.

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, the 10th day of May, 2011.

Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

[FR Doc. 2011–11790 Filed 5–12–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 9, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10364	Coastal Bank	Cocoa Beach	FL	05/06/2011

[FR Doc. 2011–11794 Filed 5–12–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Relations Information Collection Requests

AGENCY: Federal Mediation and Conciliation Service.

ACTION: 60-Day Notice and Request for Comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), as part of its continuing effort to reduce paperwork burden of arbitrators and parties that request arbitration services in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection requests. The information collection requests are FMCS forms: Arbitrator's Report and Fee Statement (Agency Form R–19), Arbitrator's Personal Data Questionnaire (Agency Form R–22), and Request for Arbitration Services (Agency Form R–43). These information collection requests were previously approved by the Office of Management Budget (OMB), and we are requesting a reinstatement without change to the collections. These information collection requests were assigned the OMB control numbers 3076–0001, 3076–0002, and 3076–0003.

DATES: Comments must be submitted on or before July 12, 2011.

ADDRESSES: Submit written comments by mail to the Office of Arbitration Services, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 or by contacting the person whose name appears under the section headed **FOR FURTHER INFORMATION CONTACT.**

Comments may be submitted also by fax at (202) 606–3749 or electronic mail (e-mail) to *arbitration@fmcs.gov*. All comments must be identified by the appropriate agency form number.

No confidential business information (CBI) should be submitted through e-mail. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as "CBI". Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by FMCS without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606–5111; Fax (202) 606–3749.

SUPPLEMENTARY INFORMATION: Copies of each of the agency forms are available from the Office of Arbitration Services by calling, faxing or writing Vella M. Traynham at the address above. Please ask for the form by title and agency form number.

I. Information Collection Requests

FMCS is seeking comments on the following information collection

requests contained in FMCS agency forms.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0001.

Name of Form: Arbitrator's Personal Data Questionnaire (FMCS form R–22).

Type of Request: Reinstatement of a collection without change in the substance or method of collection.

Affected Entities: Individuals who apply for admission to the FMCS Roster of Arbitrators.

Frequency: Individuals complete this form once, which is at the time of application to the FMCS Roster of Arbitrators.

Abstract: Title II of the Labor Management Relations Act of 1947 (Pub. L. 90–101) as amended in 1959 (Pub. L. 86–257) and 1974 (Pub. L. 93–360), states that it is the labor policy of the United States that "the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes" 29 U.S.C. 201(b). Under its regulations at 29 CFR part 1404, FMCS has established policies and procedures for its arbitration function dealing with all arbitrators listed on the FMCS Roster of Arbitrators, all applicants for listing on the Roster, and all person or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes which are to be submitted to arbitration or fact-finding. FMCS strives to maintain the highest quality of dispute resolution experts on its Roster. To ensure that purpose, it asks all candidates to complete an application form. The purpose of this collection is to gather information about applicants for inclusion in the Roster of Arbitrators. This collection is needed to evaluate applicants and to select among the applicants highly qualified individuals for inclusion on the Roster. Without this collection, FMCS will be unable to maintain or expand its Roster. The respondents are private citizens who make application for appointment to the Roster.

Burden: The number of respondents is approximately 150 individuals per year, which is the approximate number of individuals who request membership on the FMCS Roster. The time required to complete this questionnaire is approximately one hour. Each respondent is required to respond only once per application and to update the information as necessary.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0003.

Name of Form: Arbitrator's Report and Fee Statement (FMCS Form R–19).

Type of Request: Reinstatement of a collection without change in the substance or method of collection.

Affected Entities: Individual arbitrators who render decisions under FMCS arbitration policies and procedures.

Frequency: This form is completed each time an arbitrator hears an arbitration case and issues a decision.

Abstract: Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS assumes a responsibility to monitor the work of the arbitrators who serve on its Roster. This is satisfied by requiring the completion and submission of a Report and Fee Statement, which indicates when the arbitration award was rendered, the file number, the company and union, the issues, whether briefs were filed and transcripts taken, if there were any waivers by parties on the date the award was due, and the fees and days for services of the arbitrator. FMCS publishes this information in the agency's annual report, to inform the public about the arbitration services program and certain national trends in arbitration.

Burden: FMCS receives approximately 3,000 responses per year. The form is filled out each time an arbitrator hears a case and the time required is approximately ten minutes. FMCS uses this form to review arbitrator conformance with its fee and expense reporting requirements.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0002.

Type of Request: Reinstatement of a collection without change in the substance or method of collection.

Name of Form: Request for Arbitration Panel (FMCS Form R–43).

Affected Entities: Employers and their representatives, and labor unions, their representatives and employees, who request arbitration services.

Frequency: This form is completed each time an employer or labor union requests a panel of arbitrators.

Abstract: Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS offers panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements and to deal with fact finding and interest arbitration issues as well. This form is used to obtain information such as the parties' names, addresses, and the type of assistance needed. FMCS uses this information to compile panels, selecting arbitrators based in part on such factors as dispute location and issue expertise. The purpose of this information collection is to facilitate the processing of the parties' request for arbitration assistance. No third party notification or public disclosure burden is associated with this collection.

Burden: The current total annual burden estimate is that FMCS will receive requests from approximately 16,000 respondents per year. The form takes about 10 minutes to complete.

II. Request for Comments

FMCS solicits comments to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. The Official Record

The official record is the paper electronic record maintained at the address at the beginning of this document. FMCS will transfer all electronically received comments into printed-paper form as they are received.

List of Subjects

Labor-management relations, employee management relations, and Information collection requests.

Dated: May 9, 2011.

Jeannette Walters-Marquez,

Attorney Advisor.

[FR Doc. 2011–11727 Filed 5–12–11; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Wintrust Financial Corporation,* Lake Forest, Illinois; to acquire 100 percent of the voting shares of Great Lakes Advisors, Inc., Chicago, Illinois, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 10, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–11777 Filed 5–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Request for Comments and Announcement of Workshop on Standard-Setting Issues

AGENCY: Federal Trade Commission.

ACTION: Notice of workshop and request for comments.

SUMMARY: The Federal Trade Commission seeks public comments in connection with a project to examine the practical and legal issues arising from the incorporation of patented technologies in collaborative standards, including the risk of patent "hold-up" and its effect on competition and consumers. Among the topics to be considered are the disclosure of patent rights during the standard-setting process, the implications of a patent holder's commitment to license users of the standard on reasonable and non-discriminatory ("RAND") terms, and the possibility of negotiating license terms prior to choosing the standard. The Commission seeks the views of consumers and the legal, academic, and business communities on the issues to be explored in this project. As part of the project, the Commission will conduct a workshop and may prepare a report discussing these issues. This notice poses a series of questions relevant to those issues for which the Commission seeks comment.

DATES: The workshop will be held June 21, 2011, in the Conference Center of the FTC office building at 601 New Jersey Avenue, NW., Washington, DC. Prior to the workshop, the Commission will publish an agenda and further information on its Web site. Comments in response to this notice must be received on or before July 8, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: *https://ftcpublic.commentworks.com/ftc/standardsproject* (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex X), 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Patrick J. Roach, *standardsproject@ftc.gov,* FTC, 600 Pennsylvania Avenue, NW., Rm. NJ–6264, Washington, DC 20580, 202–326–2793.

SUPPLEMENTARY INFORMATION: This project focuses on practical and legal issues that arise from collaborative standard setting when standards incorporate technologies that are protected by intellectual property rights. Such a situation raises the potential for "hold-up" by a patent owner—a demand for higher royalties or other more costly licensing terms after the standard is implemented than could have been obtained before the standard was chosen. Hold-up can subvert the competitive process of choosing among technologies and undermine the integrity of standard-setting activities. Consumers can be harmed if manufacturers are able to pass on higher costs resulting from hold-up.

Collaborative standard setting plays an important role in the modern economy. In areas such as information and communications technology, for example, the usefulness of complex products and services often depends on the interoperability of components and products of different firms. To enhance the value of these complex products, private firms—including competing manufacturers, their customers and suppliers—frequently participate in standard-setting organizations (SSOs) to set technological standards for use in designing products or services. While such collaborations are not without antitrust risks, antitrust enforcers in the United States and Europe have recognized the valuable and pro-competitive character of this kind of legitimate standard-setting process.[1] It can lead to innovation, better products and more competition.

Various technological alternatives may compete to be selected for the standard. But once a technology is incorporated into a standard, and the standard becomes widely used, a manufacturer may find it difficult, or indeed impossible, to switch to what were once alternative technologies. A firm with a patent reading on the standard often can demand a royalty that reflects not only the ex ante market value of the patented invention, but also added value associated with changes in the marketplace and investments made to implement the standard. This has been called patent "hold-up."

SSOs have sought to prevent hold-up in several ways. First, many SSOs have patent disclosure rules that try to ensure that SSO members are aware of relevant patents when adopting a standard. Second, they commonly require a patent holder to commit that after the standard-setting process is completed, it will license the patent on terms that are

[1] U.S. Dept of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition, at 33–56 (2007); Guidelines on the applicability of Article 101 of the Treaty on the functioning of the European Union to horizontal co-operation agreements, 2011 OJ C 11/1, Chapter 7 (2010), available at *http://ec.europa.eu/competition/antitrust/legislation/horizontal.html.*

reasonable and non-discriminatory ("RAND"). Third, they may require or allow ex ante disclosure of specific licensing terms as part of the standard-setting process, before users of the standard are locked in to using the patented technology.

However, the ability of disclosure rules to protect consumers from patent hold-up is unclear. Such rules cannot bind patent holders that are not members of the SSO. Moreover, not all SSOs have disclosure rules. Even when SSOs do have disclosure rules, the terms will not necessarily lead to disclosure of all relevant patents. For instance, disclosure is sometimes required only of issued patents, and not pending applications that later may ripen into patents reading on a standard. Further, to alleviate the burden on SSO members, disclosure usually is required only of patents known to a firm's representatives in the standards process, and does not require a full search of the firm's patent portfolio.

Many rules encourage disclosure of the existence of relevant patents, but are vague as to what should be disclosed and when. This lack of clarity may undermine the ability of standards users to enforce the rules through allegations based on fraud, patent law estoppel or antitrust. In some situations, it may be possible for a patent holder to deceive SSO members concerning its patent rights—subverting the competitive process of choosing among technologies—without violating the particular disclosure rules. For these and other reasons, disclosure rules often may not provide full transparency about possible patent interests implicated by a standard, or effective relief of the problem of potential patent hold-up.

The most common mechanism used by SSOs to attempt to prevent patent hold-up is the RAND commitment. Many SSOs seek RAND commitments only on disclosed patents. Some SSOs require a RAND commitment for all patents owned by firms participating in the standard-setting process, and dispense with a patent disclosure requirement. Setting specific terms of the patent license generally occurs in bilateral negotiations between the patent holder and individual standards users after the standard-setting process is completed, sometimes long after the standard has been implemented.

Proponents of this practice argue that the use of RAND commitments often simplifies the standard-setting process by allowing participants to focus on technical issues. Others criticize the RAND commitment as vague. They worry that leaving the negotiation of licensing terms until after the standard has been implemented gives the patent holder excessive leverage that can lead to patent hold-up. Whether a RAND commitment is sufficient protection against hold-up depends on numerous questions concerning its enforcement B whether it can be enforced under contract law, patent law, or antitrust law, and what principles the courts should look to in deciding disputes over RAND licensing terms.

To limit the patent holder's leverage after the standard is implemented, some SSOs allow or require disclosure of specific royalty and licensing terms ex ante B during the standard setting process. The Department of Justice and the Commission have stated that unilateral announcements of price or licensing terms by patent holders as part of the standards process present little anticompetitive risk. The agencies also have stated that they will apply the rule of reason when evaluating joint activities that allow potential licensees, before the standard is adopted, to negotiate licensing terms with patent holders.[2] Despite this assurance by the enforcement agencies, however, it does not appear that there has been wide use of ex ante licensing.

In this project, the Commission seeks to examine these and other issues pertaining to potential patent hold-up of collaborative standards. It intends to consider antitrust issues, as well as examine how other legal doctrines (such as contract, patent, and consumer protection law), and economic and practical considerations affect the analysis of the issues. The Commission invites public comment on questions relevant to these topics, including:

Disclosure of Patent Rights in an SSO

- How do patent disclosure policies vary among SSOs? How do disclosure policies vary in their effectiveness of making SSO members aware of relevant patent rights?
- What considerations drive variation in disclosure policies? Why do SSOs adopt policies that may lead to incomplete disclosure of relevant patents, for instance by excluding patent applications from disclosure or by not requiring members to search their patent portfolios?
- When SSO policies create a potential for incomplete disclosure of members' patent rights, how else can members protect themselves against hold-up?
- When have SSO patent disclosure policies been reviewed or amended? What prompted those reviews? What were the results of the reviews?
- Are there mechanisms for an SSO to encourage disclosure of relevant patents or patent applications held by nonmembers?
- What ambiguities concerning the scope of a disclosure requirement exist in SSO disclosure policies? Why do they persist? Would more clarity be beneficial in preventing patent hold-up?
- What principles apply in judging whether a patent holder's conduct before an SSO is deceptive? What is the role of the SSO's patent disclosure policy in judging whether conduct is deceptive or unfair?
- Does non-disclosure or lack of information about relevant patent rights subvert the competitive process of selecting technologies for standards or undermine the integrity of standard-setting activities? How?

The RAND Licensing Commitment

- Is a RAND commitment part of an enforceable contract between the SSO and the patent holder? Between the SSO members and the patent holder? Should non-members of the SSO who wish to use the standard be able to enforce the commitment?
- Do RAND licensing commitments without accompanying disclosure commitments provide adequate protection against patent hold-up?
- Has any SSO provided guidance on how "reasonable" and "non-discriminatory" licensing terms should be judged for a RAND commitment? What is that guidance? Why do SSOs not provide more definition of RAND?
- Absent an SSO's definition or express limitations given by the patent holder in its commitment, by what standards should "reasonable" and "non-discriminatory" be determined? What principles should a court or tribunal look to in resolving a dispute between a potential licensor and licensee concerning whether proffered terms are RAND?
- What evidence may be relevant in determining whether a proffered license is reasonable and non-discriminatory?
- Should a RAND commitment preclude a patent holder from demanding from users of the standard a cross-license for patents that are essential to practice of the standard? A license of nonessential patents?
- If a patent holder that has given a RAND commitment enters into cross-licenses with some standards users, how should these be evaluated for purposes of determining whether terms it offers others are non-discriminatory?
- Should a RAND commitment preclude a patent owner from seeking in

[2] U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition, at 6–7, 33–56 (2007).

patent litigation a preliminary injunction against practice of the standard? A permanent injunction? An exclusion order in the International Trade Commission? How should courts and the ITC take a RAND commitment into account in these contexts?

• Under what circumstances should a RAND commitment given by a patent holder bind later owners of the patent? What steps can or should SSOs take to ensure that a transferred patent remains subject to a prior RAND commitment?

• Does reneging on a RAND commitment subvert the competitive process of selecting technologies for standards or undermine the integrity of standard-setting activities? How?

Ex Ante Disclosure and/or Negotiation of Licensing Terms

• What has been the experience of those SSOs that require or allow ex ante disclosure of licensing terms? How frequently do ex ante disclosures of licensing terms occur? Why are ex ante disclosures of licensing terms not required or made?

• How frequently do ex ante bilateral negotiations of licensing terms occur?

• How frequently do ex ante multilateral negotiations of licensing terms occur? How are such negotiations conducted?

• What factors affect a firm's decision to engage in, or not engage in, ex ante discussions or negotiations?

• How does a patent owner's ex ante disclosure of licensing terms affect the process of choosing technologies for incorporation into the standard?

• How do ex ante discussions or negotiations of licensing terms affect the process of choosing technologies for incorporation into the standard?

• Has experience shown a difference between terms negotiated ex ante and terms negotiated ex post?

• To what extent do concerns about antitrust liability deter ex ante disclosure or negotiation of licensing terms?

• What considerations should shape a rule of reason analysis of joint ex ante license discussions or negotiations?

Instructions for Filing Public Comments

Interested parties are invited to submit written comments electronically or in paper form. We must receive your comment by July 8, 2011. Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following Web link: *https://ftcpublic.commentworks.com/ftc/standardsproject* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link: *https://ftcpublic.commentworks.com/ftc/standardsproject.* If this notice appears at *http://www.regulations.gov/#!home,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the notice and the news release describing it.

Comments should refer to "Patent Standards Workshop, Project No. P11–1204" to facilitate the organization of comments. Please note that your comment—including your name and your State—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[3]

A comment filed in paper form should include the "Patent Standards Workshop, Project No. P11 1204" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room HB113 (Annex X), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[3] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–11704 Filed 5–12–11; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00xx; Docket No. 2011–0001; Sequence 2]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Services Administration Acquisition Regulation; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (GSA)

AGENCY: General Services Administration. (GSA)

ACTION: Notice of a request for comments regarding a new information collection.

SUMMARY: As part of a Federal Governmentwide effort to streamline the process to seek feedback from the public on service delivery, the General Services Administration (GSA) will be submitting a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: Submit comments identified by Information Collection 3090–00xx, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–00xx", Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–00xx", Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–00xx" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. Attn: Hada Flowers/IC 3090–00xx, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Instructions: Please submit comments only and cite Information Collection 3090–00xx, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417; telephone (202) 501–4755.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** at 75 FR 80542, December 22, 2010.

Below we provide GSA's projected average estimates for the next three years:

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 48.

Respondents: 510.

Annual Responses: 8350.

Frequency of Response: 1.

Average Minutes per Response: 3.82.

Burden Hours: 534.

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 Office of Management and Budget control number.

Dated: May 9, 2011.

Sonny Hashmi,

Deputy Chief Information Officer.

[FR Doc. 2011–11835 Filed 5–12–11; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0014; Docket 2011–0079; Sequence 1]

Federal Acquisition Regulation; Submission for OMB Review; Statement and Acknowledgment (Standard Form 1413)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning statement and acknowledgment (Standard Form 1413).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0014 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments

via the Federal eRulemaking portal by inputting "Information Collection 9000–0014" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0014". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0014" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0014.

Instructions: Please submit comments only and cite Information Collection 9000–0014, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Clare McFadden, Procurement Analyst, Contract Policy Branch, GSA (202) 501–0044 or e-mail *clare.mcfadden@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 1413, Statement and Acknowledgment, is used by all executive agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed contractor acknowledgment of the inclusion of those clauses in the subcontract.

B. Annual Reporting Burden

Respondents: 31,500.
Responses per Respondent: 2.
Total Responses: 63,000.
Hours per Response: .05.
Total Burden Hours: 3,150.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0014, Statement and Acknowledgment (Standard Form 1413), in all correspondence.

Dated: April 27, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–11876 Filed 5–12–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2375–PN]

Medicare and Medicaid Programs; Application by the Joint Commission for Continued Deeming Authority for Critical Access Hospitals

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed Notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an application from the Joint Commission for continued recognition as a national accrediting organization for critical access hospitals (CAHs) that wish to participate in the Medicare or Medicaid programs. Section 1865(a)(3)(A) of the Social Security Act requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 13, 2011.

ADDRESSES: In commenting, please refer to file code CMS–2375–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2375–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2375–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: L. Tyler Whitaker, (410) 786–5236. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2375–PN and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as

they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH) provided certain requirements are met. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 485, subpart F specify the conditions that a CAH must meet in order to participate in the Medicare program, and the scope of covered services. The conditions for Medicare payment for CAHs are set forth at § 413.70.

Generally, in order to enter into a provider agreement with the Medicare program, a CAH must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 485, subpart F. Thereafter, the CAH is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. The regulations concerning the reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every six years or sooner as determined by us.

The Joint Commission's term of approval as a recognized accreditation program for CAHs expires November 21, 2011.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and reapproval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the Joint Commission's request for continued deeming authority for CAHs. This notice also solicits public comment on whether the Joint Commission's requirements meet or exceed the Medicare conditions for participation for CAHs.

III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for reapproval as a deeming organization for CAHs. This application was determined to be complete April 1, 2011. Under section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of the Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the Joint Commission's standards for a CAH as compared with CMS' CAH conditions of participation.
- The Joint Commission's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the Joint Commission's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ The Joint Commission's processes and procedures for monitoring CAHs found out of compliance with the Joint Commission's program requirements. These monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

++ The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ The Joint Commission's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the Joint Commission's staff and other resources, and its financial viability.

++ The Joint Commission's capacity to adequately fund required surveys.

++ The Joint Commission's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ The Joint Commission's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant effect on the rights of States, local or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 4, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–11705 Filed 5–12–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7031–NC2]

Announcement of Notice; Proposed Establishment of a Federally Funded Research and Development Center—Second Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health & Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces our intention to sponsor a Federally Funded Research and Development Center (FFRDC) to facilitate the modernization of business processes and supporting systems and their operations. This is the second of three notices which must be published over a 90-day period in order to advise the public of the agency's intention to sponsor an FFRDC.

DATES: We must receive comments on or before July 5, 2011.

ADDRESSES: Comments on this notice must be mailed to the Centers for Medicare & Medicaid Services, Candice Savoy, Contracting Officer, 7500 Security Boulevard, Mailstop C2–01–10, Baltimore, MD 21244 or e-mail at *Candice.Savoy@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Candice Savoy, (410) 786–7494 or *Candice.Savoy@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Centers for Medicare & Medicaid Services (CMS), an operating division within the Department of Health and Human Services (DHHS), intends to sponsor a study and analysis, delivery system, simulations, and cost modeling Federally Funded Research and Development Center (FFRDC) to facilitate the modernization of business processes and supporting systems and their operations. Some of the broad task areas that will be utilized include strategic/tactical planning, conceptual planning, design and engineering, procurement assistance, organizational planning, research and development, continuous process improvement, IV&V/compliance, and security planning. Further analysis will consist of expert advice and guidance in the areas of program and project management focused on increasing the effectiveness and efficiency of strategic information management, prototyping, demonstrations, and technical activities. The FFRDC may also be utilized by non-sponsors, within DHHS.

The FFRDC will be established under the authority of 48 CFR 35.017.

The contractor will be available to provide a wide range of support including, but not limited to:

- Strategic/tactical planning including assisting with planning for future CMS program policy, innovation, development, and support for Medicare and Medicaid.
- Conceptual planning including operations, analysis, requirements, procedures, and analytic support.
- Design and engineering including technical architecture direction.
- Procurement assistance, review/recommendations for current contract processes to include, contract reform, technical guidance, price and cost estimating, support and source selection evaluation support.
- Organizational planning including functional and gap analysis.
- Research and development, assessment of new technologies and advice on medical and technical innovation and health information.
- Continuous process improvement, ILC/current practices review and recommendations, implementation of best practices and code reviews.
- IV&V/Compliance, DUA surveillance and Web site content review.
- Security including Security Assessments and Security Test and Evaluations (ST&E). Identify, define, and resolve problems as an integral part of the sponsor's management team.
- Providing independent analysis about DHHS vulnerabilities and the effectiveness of systems deployed to make DHHS more effective in providing healthcare services and implementation of new healthcare initiatives.
- Providing intra-departmental and inter-agency cross-cutting, risk-informed analysis of alternative resource approaches.
- Developing and deploying analytical tools and techniques to evaluate system alternatives (for example, policy-operations-technology tradeoffs), and life-cycle costs that have broad application across CMS.
- Developing measurable performance metrics, models, and simulations for determining progress in securing DHHS data or other authorized data sources, (non-DHHS data sources, such as the census data or Department of Labor data, Veterans Administration, Department of Defense, data in developing performance metrics, and models).
- Providing independent and objective operational test and evaluation analysis support.
- Developing recommendations for guidance on the best practices for standards, particularly to improve the inter-operability of DHHS components.
- Assessing technologies and evaluating technology test-beds for accurate simulation of operational conditions and delivery system innovation models.
- Supporting critical thinking about the DHHS enterprise, business intelligence and analytic tools that can be applied consistently across DHHS and CMS programs.
- Supporting systems integration, data management, and data exchange that contribute to a larger DHHS intra- and inter-agency enterprise as well as collaboration with State, local tribal governments, the business sector (for-profit and not-for-profit), academia and the public.
- Providing recommendations for standards for top-level DHHS systems requirements and performance metrics best practices for an integrated DHHS approach to systems solutions and structured and unstructured data architecture.
- Understanding key DHHS organizations and their specific role and major acquisition requirements and

support them in the requirements development phase of the acquisition lifecycle.

- The FFRDC must function so effectively as to act as an agent for the sponsor in the design and pursuit of mission goals.
- The FFRDC must provide rapid responsiveness to changing requirements for personnel in all aspects of strategic, technical and program management.
- The FFRDC must recognize government objectives as its own objectives, partnering with the sponsor in pursuit of excellence in public service.
- The FFRDC must allow for non-sponsor, other than CMS, work for operating Divisions within DHHS.

We are publishing this notice in accordance with 48 CFR 5.205(b) of the Federal Acquisition Regulations (FAR), to enable interested members of the public to provide comments on this proposed action. We note that this is the second of three notices issued under the FAR.

The Request for Proposal will be posted on FedBizOpps in the Summer of 2011. Alternatively, a copy can be received by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: May 4, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–11708 Filed 5–12–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: OCSE–157 Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0177.

Description: The information obtained from this form will be used to: (1) Report Child Support Enforcement activities to the Congress as required by law; (2) calculate incentive measures performance and performance indicators utilized in the program; and (3) assist the Office of Child Support Enforcement (OCSE) in monitoring and evaluating State Child Support programs. OCSE is proposing minor changes to the OCSE–157 report instructions for medical support line items that will provide states with the option to define medical support to include private health insurance as well as other health care coverage such as Medicaid, Children's Health Insurance Program (CHIP) and other state coverage plans, and cash medical support. Further legislative or regulatory changes may be necessary to update medical child support policy.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–157	54	1	7	378
Estimated Total Annual Burden Hours:				378

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection. The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–11796 Filed 5–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0015]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Orphan Drugs; Common European Medicines Agency/ Food and Drug Administration Application Form for Orphan Medicinal Product Designation (Form FDA 3671)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 13, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0167. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Orphan Drugs; Common EMA/FDA Application Form for Orphan Medicinal Product Designation (Form FDA 3671)—21 CFR Part 316—(OMB Control Number 0910–0167)—Extension

Sections 525 through 528 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360aa through 360 dd) give FDA statutory authority to do the following: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs, (2) designate eligible drugs as orphan drugs, (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval, and (4) encourage sponsors to make orphan drugs available for treatment on an "open protocol" basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316 (21 CFR part 316) and specify procedures that sponsors of orphan drugs use in availing themselves of the incentives provided for orphan drugs in the FD& C Act and sets forth procedures FDA will use in administering the FD& C Act with regard to orphan drugs. Section 316.10 specifies the content and format of a request for written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Based on past experience, the FDA estimates that there will be two respondents to §§ 316.10, 316.12, and 316.14 requiring 200 hours of human resources annually.

Section 316.20 specifies the content and format of an orphan drug application which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.21 specifies content of a request for orphan drug designation required for verification of orphan-drug status. Section 316.26 allows an applicant to amend the applications under certain circumstances. The Common European Medicines Agency (EMA)/FDA Application Form for Orphan Medicinal Product Designation (form FDA 3671) is intended to benefit sponsors who desire to seek orphan designation of drugs intended for rare diseases or conditions from both the European Commission and FDA by reducing the burden of preparing separate applications to meet the regulatory requirements in each jurisdiction. It highlights the regulatory cooperation between the United States and the European Union mandated by the Transatlantic Economic Council. The FDA does not believe the new form will result in any increased burden on the respondents and therefore we estimate no additional burden. Based on past experience, FDA estimates there will be 214 respondents requiring 64,200 hours of human resources annually. Section 316.22 specifies requirement of a permanent resident agent for foreign sponsors. Based on past experience, FDA estimates 55 respondents requiring 110 hours of human resources annually. Section 316.27 specifies content of a change in ownership of orphan-drug designation. Based on past experience, FDA estimates 43 respondents requiring 215 hours of human resources annually. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. Based on number of orphan-drug designations, the number of respondents is estimated as 1,652 requiring 4,956 hours of human resources annually. Finally, § 316.36 describes information required of sponsor when there is insufficient quantity of approved orphan drug. Based on past experience, FDA estimates 1 respondent requiring 45 hours of human resources annually.

The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining orphan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers.

In the **Federal Register** of January 21, 2011 (76 FR 3910), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section and FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
316.10, 316.12, and 316.14	2	1	2	100	200
316.20, 316.21, and 316.26 Form FDA 3671	214	2	428	150	64,200
316.22	55	1	55	2	110
316.27	43	1	43	5	215
316.30	1,652	1	1,652	3	4,956
316.36	1	3	3	15	45
Total					69,726

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–11744 Filed 5–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0355]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 27, 2010 (75 FR 59266), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0606. The approval expires on February 28, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–11743 Filed 5–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–P–0128]

Determination That XIBROM (Bromfenac Ophthalmic Solution) 0.09% Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that XIBROM (bromfenac ophthalmic solution) 0.09% was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for bromfenac ophthalmic solution 0.09% if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Patrick Raulerson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6368, Silver Spring, MD 20993–0002, 301–796–3522.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

XIBROM (bromfenac ophthalmic solution) 0.09% is the subject of NDA 021664 held by ISTA Pharmaceuticals, Inc. (Ista), approved March 24, 2005. XIBROM is a topical nonsteroidal anti-inflammatory drug for the treatment of postoperative inflammation and reduction of ocular pain in patients who have undergone cataract extraction.

In a citizen petition dated March 1, 2011, and in a letter dated March 3, 2011, Ista informed FDA that it had discontinued shipping XIBROM (bromfenac ophthalmic solution) 0.09% as of February 28, 2011. Ista took the position that XIBROM (bromfenac ophthalmic solution) 0.09% had been discontinued for safety reasons.

After considering the citizen petition and reviewing Agency records, FDA determined under § 314.161 that XIBROM (bromfenac ophthalmic solution) 0.09% was not withdrawn for reasons of safety or effectiveness. We described the basis for this determination in our letter response to Ista's citizen petition (available on *http://www.regulations.gov* under Docket No. FDA–2011–P–0128).

Accordingly, the Agency will continue to list XIBROM (bromfenac ophthalmic solution) 0.09% in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to XIBROM (bromfenac ophthalmic solution) 0.09% may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–11745 Filed 5–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0005; FDA 225–09–0014]

Memorandum of Understanding Between the Food and Drug Administration and the International Anesthesia Research Society for the Strategies for Mitigating Anesthesia Related Neuro-Toxicity in Tots Public-Private Partnership

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of an amendment to memorandum of understanding (MOU) 222–09–0014 between the International Anesthesia Research Society (IARS) and FDA. The purpose of this MOU is to establish the framework for collaboration between the parties and to support their shared interest of promoting the safe use of anesthetics and sedatives in children. This is an amendment to this MOU to rename the SAFEKIDS (Safety of Key Inhaled and Intravenous Drugs in Pediatrics) Public-Private Partnership (PPP) to SmartTots (Strategies for Mitigating Anesthesia Related Neuro-Toxicity in Tots) PPP.

DATES: The agreement became effective March 17, 2011.

FOR FURTHER INFORMATION CONTACT: Wendy R. Sanhai, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4128, Rockville, MD 20857, 301–796–8518, Fax: 301–827–5891, *Wendy.sanhai@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In March 2009, FDA launched the SAFEKIDS Initiative to address major gaps in scientific information about the effects of anesthetics and sedatives on neurocognitive development of infants and young children. Under the framework of the SAFEKIDS Initiative, FDA and IARS entered into MOU 222–09–0014 to develop the SAFEKIDS PPP—a collaboration among multiple stakeholders to support shared interest of promoting the safe use of anesthetics and sedatives in children.

Per this announcement, the SAFEKIDS Initiative has been renamed the FDA Pediatric Anesthesia Safety Initiative (PASI). As such, all activities supported under the former SAFEKIDS Initiative, including existing projects funded by FDA, will now be supported under PASI.

The amended MOU is intended to revise MOU 222–09–0014 to reflect the official renaming of the FDA–IARS PPP to SmartTots PPP.

In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the Agency is publishing notice of this MOU.

Dated: May 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

BILLING CODE 4160–01–P

225-09-0014

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE

UNITED STATES FOOD AND DRUG ADMINISTRATION (FDA)

AND THE

INTERNATIONAL ANESTHESIA RESEARCH SOCIETY (IARS)

FOR

THE STRATEGIES FOR MITIGATING ANESTHESIA RELATED NEURO-TOXICITY IN TOTS

PUBLIC-PRIVATE PARTNERSHIP (SMARTTOTS PPP)

This Memorandum of Understanding (MOU) is executed by and between the United States Food and Drug Administration (FDA) and the International Anesthesia Research Society (IARS), hereafter referred to collectively as the "Parties." This MOU is deemed effective as of the date it is fully signed by both Parties (Effective Date).

WHEREAS, non-clinical studies in juvenile animal models show that exposure to some anesthetics and sedatives is associated with memory and learning deficits and other neurodegenerative changes in the central nervous system;

WHEREAS, insufficient human data exist to support or refute the possibility that similar effects could occur in children; thus, there is a critical need to address the public health issues associated with the safe use of anesthesia and sedatives in children;

WHEREAS, the FDA, under its public health mission, is interested in partnering with multiple stakeholders (e.g. professional societies, academic research institutions, patient advocacy groups, industry and other government and nonprofit organizations) to investigate the effect of anesthetics and sedatives on the developing human brain, including long-term studies in neonates and young children, and to ensure that information and outcomes generated from this research can be used to benefit public health;

WHEREAS, the IARS is a nonpolitical nonprofit voluntary membership society, organized and operated exclusively for exempt purposes as set forth in section 501(c)(3) of the Internal Revenue Code, whose mission is to encourage, stimulate, and fund ongoing anesthesia related research projects and to disseminate current, state-of-the-art, basic and clinical research data in all areas of clinical anesthesia;

WHEREAS, the FDA and the IARS seek to develop a Public-Private Partnership (PPP) to leverage the resources and expertise of the Parties and develop an overarching framework to bring together multiple stakeholders to address the major scientific and clinical gaps regarding the safe use of anesthetics and sedatives in children;

WHEREAS, the Parties have agreed to enter into this MOU to develop the SmartTots (Strategies for Mitigating Anesthesia Related Neuro-Toxicity in Tots)) PPP, a multi-year, multi-phased collaborative effort to make anesthesia safer for children, which will include multiple public and private partners working together in the interest of public health.

NOW, THEREFORE, in consideration of the mutual agreement of the Parties, and of the covenants and conditions hereinafter expressed, the Parties hereby agree as follows:

I. PURPOSE

The purpose of this MOU is to establish the framework for collaboration between the Parties and to support their shared interest of promoting the safe use of anesthetics and sedatives in children. The strategic goals and expected results of this collaboration are to:

1. Establish the SmartTots PPP for the purpose of supporting, implementing, and managing a series of scientific projects to bridge the knowledge gaps that exist in elucidating whether certain anesthetic and sedative agents cause neurotoxicity in rodents, non-human primates, and humans.

2. Share information and data to the extent permitted by State and Federal law, and ensure that information, know-how, and best practices resulting from the scientific projects conducted under the SmartTots PPP are placed in the public domain for the benefit of all stakeholders.

3. Inform clinicians, patients, and other stakeholders about any potential safety risks associated with certain anesthetic and sedative agents, through joint publications, workshops, and other educational efforts.

4. Inform future activities, including clinical trials, and the research and development of anesthetic and sedative agents for intended use in the pediatric population, to the extent permitted by available scientific data.

II. AUTHORITY

FDA is authorized to enforce the Federal Food, Drug, and Cosmetic Act (the Act) as amended (21 U.S.C. 301). In fulfilling its responsibilities under the Act, FDA among other things, directs its activities toward promoting and protecting the public health by assuring the safety, efficacy, and security of drugs. To accomplish its mission, FDA must stay abreast of the latest developments in research and also communicate with stakeholders about complex scientific and public health issues. Increased development of research, education and outreach partnerships with IARS will greatly contribute to FDA's mission.

III. RESPONSIBILITIES OF THE PARTIES

In pursuit of the goals described above, the Parties agree to work through the following process.

1. Under the framework of the SmartTots PPP, the FDA and the IARS will develop an overarching infrastructure to implement and sustain additional pre-clinical and clinical research, leveraging a combination of public and private resources and expertise to bridge the scientific and public health gaps in the pediatric population.

2. The Parties will establish a public-private governance structure including a Steering Committee, an Executive Board, a Scientific Advisory Board, and technical subcommittees. These governance committees will develop strategic and operational plans, set priorities, and review, implement, oversee, and evaluate individual projects conducted under the SmartTots PPP. The membership of the governance committees will be inclusive and will be comprised of representatives of the Parties and other stakeholders. The Parties will develop specific policies and procedures to carry out the work of the governance committees within the framework of the PPP. No

committee, board, or subcommittee established pursuant to this MOU will provide advice or recommendations to FDA or to any government agency.

3. To ensure integrity, scientific rigor, and consistency with the goals and objectives of the SmartTots PPP, all projects proposed for implementation will undergo peer review, with final project selection to be accomplished through a consensus among qualified experts operating in a consistent and unbiased manner within the overall governance structure of the PPP.

4. Data, outcomes and best practices generated under the SmartTots PPP will be placed in the public domain for the benefit of all stakeholders and patients.

IV. RESOURCES

Sources of support for projects under this MOU will be governed by State and Federal law and applicable policies and procedures. The terms for such support will be set forth in the specific and separate written agreements for each project. The MOU does not create binding, enforceable obligations against any Party. All activities undertaken pursuant to the MOU are subject to the availability of personnel, resources, and funds. This MOU does not affect or supersede any existing or future agreements or arrangements among the Parties. This MOU and all associated agreements will be subject to the applicable policies, rules, regulations, and statutes under which the FDA and IARS operate.

V. GENERAL PROVISIONS

1. Nothing in this MOU alters the statutory authorities or obligations of FDA. This MOU is intended to facilitate cooperative efforts between the Parties in the area of pediatric anesthesiology.

2. U.S. Federal law governs this MOU for all purposes, including, but not limited to, determining the validity of the MOU, the meaning of its provisions, and the rights, obligations, and remedies of the Parties.

3. Access to non-public information shall be governed by separate Confidentiality Disclosure Agreements in which the Parties will agree and certify in writing that they shall not further release, publish or disclose such information and that they shall protect such information. No proprietary data, trade secrets or patient confidential information shall be disclosed among the Parties unless permitted by the provisions of 21 U.S.C. 331(j), 21 U.S.C. 360j(c), 18 U.S.C. 1905, and other pertinent laws and regulations governing the confidentiality of such information.

4. Release of information to the media or to the general public about the SmartTots PPP or the activities conducted by the Parties pursuant to the PPP and this MOU shall be subject to prior review by and agreement between the Parties.

5. It is understood that, although the Parties have mutual interests, there may be opportunities for independent collaborations and activities outside the scope of this MOU, but which are within the scope of the Parties' respective missions. As such, the Parties may, as appropriate, enter into independent negotiations and agreements with prospective partner/s without any effect on this MOU.

6. Rights to inventions or intellectual property developed will be addressed in separate written development and implementation agreements among the Parties. To the extent there is FDA participation in any projects related to development of any product, invention, or property developed, such activities will be governed by applicable Federal law.

7. Any notice or other communication required or permitted under this MOU shall be in writing and will be deemed effective on the date it is received by the receiving Party.

8. FDA participation in this MOU is governed by Federal statutes and regulations.

VI. TERM, TERMINATION AND MODIFICATIONS

1. This MOU constitutes the entire agreement between the Parties as to the matters herein. There are no representations, warranties, agreements, or understandings, expressed or implied, written or oral, between the Parties relating to the subject matter of this MOU that are not fully expressed herein.

2. This MOU may be modified only upon the mutual written consent of the Parties. Modifications must be signed by the original signatories to this MOU, or by their designees or successors. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this MOU.

3. This MOU, when accepted by the Parties, will remain in effect for three (3) calendar years from the Effective Date, unless modified or terminated.

4. Either Party to this MOU may terminate its participation by written notice at any time, with or without cause, and without incurring any liability or obligation. Such written notice shall be given by the terminating Party to the other Party at least 60 days prior to the date of actual termination.

VII. CONTACTS

Notices or formal communications pursuant to this MOU shall be sent in writing by personal delivery, overnight delivery, facsimile telecommunication with confirmatory receipt, or certified or registered mail, return receipt requested, to the following contact for each Party:

For FDA: Wendy R. Sanhai, Ph.D., M.B.A.
Senior Scientific Advisor
Office of the Commissioner, FDA
5600 Fishers Lane, Suite 6A-08
Rockville, MD. 20857
Fax: (301) 827-5891

With a copy to: Chekesha S. Clingman, Ph.D.
Senior Scientific Program Manager
Office of the Commissioner, FDA
5600 Fishers Lane, Suite 6A-08
Rockville, MD 20857
Fax: (301) 827-5891

For IARS: Robert N. Sladen, MD
Chair, IARS Board of Trustees
International Anesthesia Research Society
100 Pine Street, Suite 230
San Francisco, CA 94111
Fax: (415) 296-6901

With a copy to: Thomas A. Cooper
Executive Director
International Anesthesia Research Society
100 Pine Street, Suite 230
San Francisco, CA 94111
Fax: (415) 296-6901

The Parties shall notify each other of any change of address or change of named contact by written notice as specified in this paragraph VI. All notices shall be effective upon date of receipt.

Signatures begin on next page

SIGNATURES OF RESPONSIBLE PARTIES:

We, the undersigned, agree to abide by the terms and conditions of this MOU.

APPROVED AND ACCEPTED FOR THE
UNITED STATES FOOD AND DRUG ADMINISTRATION

_____ Date _____
Janet Woodcock, M.D.
Director, Center for Drug Evaluation and Research
Food and Drug Administration

APPROVED AND ACCEPTED FOR THE
INTERNATIONAL ANESTHESIA RESEARCH SOCIETY

_____ Date _____
Robert N. Sladen, M.D.
Chair, IARS Board of Trustees
International Anesthesia Research Society

[FR Doc. 2011–11746 Filed 5–12–11; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Interactive Diet and Activity Tracking in AARP (iDATA): Biomarker Based Validation Study (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 14, 2011 (76 FR 13647) and allowed 60-days for public comment. There were no public comments in response to the notice. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has

been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Interactive Diet and Activity Tracking in AARP (iDATA): Biomarker Based Validation Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The AARP-based study is one component of a multi-center biomarker validation study project involving two other large cohorts in the United States. The iDATA study involves large cohorts and provides the necessary sample size to evaluate the measurement error structure of the diet and physical activity assessment instruments and the heterogeneity of the measurement error structure across multiple and diverse study populations. The iDATA study will include 1,500 participants from the NIH–AARP Diet and Health Study and current AARP membership. The data collection instruments adhere to The Public Health Service Act, which provides authority to the Risk Factor Monitoring and Methods Branch in the Division of Cancer Control and Population Sciences and the Division of Cancer Epidemiology and Genetics. Both divisions work to reduce cancer in the U.S. population by establishing and supporting programs for the detection, diagnosis, prevention and treatment of cancer; and by collecting, identifying, analyzing and disseminating information on cancer research, diagnosis, prevention and treatment. Dietary and physical activity data will be gathered using the instruments as detailed below. In addition, biospecimen and clinic data will be also gathered. *Frequency of Response:* Monthly. *Affected Public:* Individuals. *Type of Respondents:* U.S. adults (persons aged 50–74). The annual reporting burden is provided for each study component as shown in the table below. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Study component	Instrument	Number of respondents	Frequency of response	Average time per response (Minutes/Hour)	Annual burden hours
Type of Respondents for All Instruments: Adult Participants, 50–74 Years of Age					
Screening	Pre-Screening Telephone Interview (Attachment 1).	1,334	1	15/60 (.25)	334
	Clinic Eligibility Screening Interview (Attachment 3).	742	1	10/60 (.167)	124
Clinical Components.	NHANES III Anthropometry (Attachment 13).	742	3	10/60 (.167)	371
	Resting Metabolic rate—Main (Attachment 7).	742	1	30/60 (.50)	371
	Resting Metabolic Rate—Subsample (Attachment 7).	34	1	30/60 (.50)	17
	Fasting Blood Protocol and Form (Attachment 5).	742	2	10/60 (.167)	247
	Fitness test Protocol and Form (Attachment 10).	742	1	15/60 (.25)	186
	Physical Activity Readiness Questionnaires—PAR–Q or PARmed-X (Attachments 11A–11B).	742	1	5/60 (.083)	62
	Doubly Labelled Water—Main (Attachment 6).	742	1	40/60 (.667)	495
	Doubly Labelled Water—Subsample (Attachment 6).	34	1	40/60 (.667)	23
Dietary Questionnaires.	Automated Self-Administered 24-hour Dietary Recall (ASA24) (Attachment 32).	742	6	30/60 (.50)	2,227
	4–Day Food Record (Attachment 17).	742	2	60/60 (1.0)	1,485
	Diet History Questionnaire (DHQ*Web-II) (Attachment 33).	742	2	45/60 (.75)	1,114
	7–Day Food Checklist (Attachment 16).	742	2	60/60 (1.0)	1,485
Physical Activity Questionnaires.	Activities Completed over Time in 24 Hours (ACT24) (Attachment 34).	742	6	30/60 (.50)	2,227
	Community Healthy Activities Model Program for Seniors (CHAMPS) (Attachment 19).	742	2	15/60 (.25)	371
	Harvard Lifestyle Validation Study Physical Activity Questionnaire (Attachment 18).	742	2	10/60 (.167)	247
	Sedentary Behaviors Questionnaire (Attachment 21).	742	2	20/60 (.33)	495
	Stanford physical activity Survey (Attachment 22).	742	2	8/60 (.133)	198
	NIH–AARP physical activity questions (Attachment 20).	742	2	10/60 (.167)	247
Home Collections	24 Hour Urine Collection Log (Attachment 14).	742	2	60/60 (1.0)	1,485

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS—Continued

Study component	Instrument	Number of respondents	Frequency of response	Average time per response (Minutes/Hour)	Annual burden hours
	Saliva Protocol and Form (Attachment 15).	742	3	10/60 (.167)	371
	Heart Rate Monitor Log (Attachment 8).	34	1	35/60 (.583)	20
	Physical Activity Monitor Log (Accelerometer/Inclinometer) (Attachment 12).	742	2	35/60 (.583)	866
Total	.....	.....	.....	.....	15,060

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the *Attention:* NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Heather Bowles, Risk Factor Monitoring and Methods Branch, Division of Cancer Control and Population Sciences, National Cancer Institute, 6130 Executive Blvd. MSC 7344, Bethesda, MD 20892–7335 or call non-toll-free number 301–496–7344 or e-mail your request, including your address to: *bowleshr@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 9, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–11824 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: May 25, 2011.

Closed: 6:30 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: 8 p.m. to 8:30 p.m.

Agenda: To discuss clinical trials policy.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Petra Kaufmann, MD, Director, Office of Clinical Research—NINDS, National Institutes of Health, Neuroscience Center—Room 2216, 6001 Executive Blvd., Bethesda, MD 20892, 301–496–9135,*Kaufmanp2@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review funding cycle.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Basic and Preclinical Programs Subcommittee.

Date: May 26, 2011.

Open: 8 a.m. to 9 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: 9 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter Joseph Koroshetz, MD, Deputy Director, NINDS, Building 31, Room 8A52, 31 Center Drive, MSC 2540, 301–496–3167, *Koroshetzw@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review funding cycle.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Training, Career Development, and Special Programs Subcommittee.

Date: May 26, 2011.

Open: 9:30 a.m. to 10:30 a.m.

Agenda: To discuss the training plan of the institute.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Stephen J. Korn, PhD, Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health,

6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, MD 20892–9527, 301–496–4188.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review funding cycle.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11779 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: June 9–10, 2011.

Closed: June 9, 2011, 9:30 a.m. to 10:30 a.m.

Agenda: Review of the Pioneer and Innovator Awards.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: June 9, 2011, 10:30 a.m. to 5 p.m. June 10, 2011, 8 a.m. to 4 p.m.

Agenda: NIH Director's Report, NIH updates, and other committee business.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20852.

Contact Person: Gretchen Wood, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, One Center Drive, Building 1, Room 114, Bethesda, MD 20892, *woodgs@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 5, 2011.

Jennifer S. Spaeth.

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11791 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: June 3, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Ruixia Zhou, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: May 9, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11798 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: June 9, 2011.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, National Center for Research Resources, or, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1080, MSC 4874, Bethesda, MD 20892–4874, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: May 9, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11821 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: June 2, 2011.

Time: 11:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NHGRI Twinbrook Library, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, SEP—Clinical Sequencing.

Date: July 11–12, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 9, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11814 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: June 13–14, 2011.

Time: June 13, 2011, 6 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Marriott Bethesda North Hotel and Conference Center, 5701 Marinellli Road, Bethesda, MD 20852.

Time: June 14, 2011, 8 a.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Room 5328, Bethesda, MD 20892.

Contact Person: Claire Kelso, Intramural Program Specialist, Division of Intramural Research, Office of the Scientific Director, National Human Genome Research Institute, 50 South Drive, Building 50, Room 5222, Bethesda, MD 20892–8002, 301 435–5802, *claire@nhgri.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: *May 9, 2011.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11803 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section, June 9, 2011, 8 a.m. to June 10, 2011, 5:30 p.m. Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036 which was published in the **Federal Register** on May 3, 2011, 76 FR 24897–24899.

The meeting will be held at the Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. The meeting date and time remain the same. The meeting is closed to the public.

Dated: May 9, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11786 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Nursing and Related Clinical Sciences Study Section, June 7, 2011, 8 a.m. to June 9, 2011, 5 p.m., Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica,

CA, 90405 which was published in the **Federal Register** on April 29, 2011, 76 FR 24036–24038.

The meeting will be held June 7, 2011 to June 8, 2011. The meeting time and location remain the same. The meeting is closed to the public.

Dated: *May 6, 2011.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11780 Filed 5–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: OMB 65, Secondary Inspections Tool; OMB Control No. 1615–New.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 12, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by email, please make sure to add Secondary Inspections Tool in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning OMB 65, Secondary Inspections Tool. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Secondary Inspections Tool.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–65. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The Secondary Inspections Tool (SIT) is an internet-based tool that processes, displays, and retrieves biometric and biographic data from the Automated Biometric Identification System (IDENT) within the US-Visitor and Immigrant Status Indicator Technology (US–VISIT) system. USCIS trained staff in USCIS District/Field Offices will be instructed to use SIT at the time of a required interview in connection with an immigration or naturalization benefit request, or at the time of an individual's appearance at a USCIS District/Field Office to receive a document evidencing an immigration benefit, each instance following a required appearance at an Application Support Center (ASC) for fingerprinting. This information collection is necessary for USCIS to collect and process the required biometric and biographic data from an applicant, petitioner, sponsor, beneficiary, or other individual residing in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,622,176 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 134,641 annual burden hours.

If you need a copy of the supporting statement, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: May 10, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–11862 Filed 5–12–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Request for Entry or Departure for Flights To and From Cuba

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0134.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Request for Entry or Departure for Flights To and From Cuba. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 13204) on March 10, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is

conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 13, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). *Your comments should address one of the following four points:*

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Request for Entry or Departure for Flights To and From Cuba.

OMB Number: 1651–0134.

Form Number: None.

Abstract: Until recently, direct flights between the United States and Cuba were required to arrive or depart from one of three named U.S. airports: John F. Kennedy International Airport, Los Angeles International Airport, and Miami International Airport. On January 28, 2011, Customs and Border Protection's (CBP) regulations were amended to allow additional U.S. airports that are able to process international flights to request approval by CBP to process authorized flights between the United States and Cuba.

To be eligible to request approval to accept flights to and from Cuba, an airport must be an international airport, landing rights airport, or user fee airport, as defined and described in part 122 of the CBP regulations, and have adequate and up-to-date staffing, equipment, and facilities to process international traffic. In order for an airport to seek approval to allow arriving and departing flights from Cuba, the port authority must send a written request to CBP requesting permission. Information about the program and how to apply may be found at: *http://www.cbp.gov/xp/cgov/newsroom/highlights/cuba_flights.xml.*

This information collection is authorized by 19 U.S.C. 1433, 1644a, 8 U.S.C. 1103, and provided for by 19 CFR 122.153.

Current Actions: This submission is being made to extend the expiration date of this information collection with a change to the burden hours resulting from revised estimates by CBP of the number of respondents. There is no change to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 30.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 30.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: May 9, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–11721 Filed 5–12–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 5, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–11514 Filed 5–12–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2011–0020]

BOEMRE Information Collection Activity: 1010–0068, Unitization, Extension of a Collection; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of extension of an information collection (1010–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BOEMRE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations that are related to unitization activities on the OCS.

DATES: Submit written comments by July 12, 2011.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607.

You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

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

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled Enter Keyword or ID, enter BOEM–2011–0020 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- *E-mail: cheryl.blundon@boemre.gov.* Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement, Attention: Cheryl Blundon, 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ICR 1010–0068 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart M, Unitization.

OMB Control Number: 1010–0068.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Section 1334(a) specifies that the Secretary "provide for the prevention of waste and conservation of the natural resources of the [O]uter Continental Shelf, and the protection of correlative rights therein" and include provisions for "unitization, pooling, and drilling agreements."

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Unitization requests for approval are subject to cost recovery, and BOEMRE regulations specify service fees for these requests.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2) and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." No items of a sensitive nature are collected. Responses are mandatory or are required to obtain or retain a benefit.

BOEMRE uses the information to determine whether to approve a proposal to enter into an agreement to unitize operations under two or more leases or to approve modifications when circumstances change. The information is necessary to ensure that operations will result in preventing waste, conserving natural resources, and protecting correlative rights, including the Government's interests. We also use information submitted to determine competitiveness of a reservoir or to decide that compelling unitization will achieve these results.

Frequency: On occasion.

Description of Respondents: Potential respondent include Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 4,913 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart M	Reporting requirement	Hour burden
		Non-hour cost burden
1301	Description of requirements. Burden included in the following sections	0
1301(d), (f)(3), (g)(1), (g)(2),(ii).	Request suspension of production or operations	Burden covered under 1010–0114.
1302(b)	Request preliminary determination on competitive reservoir	39
1302(b)	Submit concurrence or objection on competitiveness with supporting evidence	39
1302(c), (d)	Submit joint plan of operations, supplemental plans, or a separate plan if agreement cannot be reached.	39
1303	Apply for voluntary unitization, including submitting unit agreement or revision, unit operating agreement, initial plan of operation, obtain approval of Regional Supervisor if required, and supporting data; request for variance from model agreement and other related requirements.	169** $11,698 fee
1304(b)	Request compulsory unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, obtain approval of Regional Supervisor if required, and supporting data; serving non-consenting lessees with documents.	161
1303; 1304	*Submit revisions or modifications to unit agreement, unit operating agreement, plan of operation, change of unit operator, etc.	8 $831 fee
1303; 1304	*Submit initial, and revisions to, participating area	48
1304(d)	Request hearing on required unitization	1
1304(e)	Submit statement at hearing on compulsory unitization	5
1304(e)	Pay for and submit three copies of verbatim transcript of hearing	1 $500 fee.
1304(f)	Appeal final order of compulsory unitization	Exempt under 5 CFR 1320(a)(2), (c)
1300–1304	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	1

*These requirements are specified in each Unit Agreement.

** Due to ongoing litigation in the Pacific Region, respondents did not submit burden data.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified three non-hour cost burdens for this collection. Section 1303 requires fees for a voluntary unitization or unit expansion ($11,698) and a fee for

a unitization revision ($831). Respondents are also required to pay for court reporter and transcripts § 250.1304(d), if seeking compulsory unitization ($500). We have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: May 4, 2011.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–11837 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N173; 20124–1112–0000–F2]

Regional Habitat Conservation Plan, Hays County, TX

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of final environmental impact statement, final Hays County regional habitat conservation plan, and draft record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make available the final environmental impact statement (EIS), the final Hays County regional habitat conservation plan (RHCP) under the National Environmental Policy Act of 1969 (NEPA), and our draft record of decision (ROD). Our intended action is the issuance of a 30-year incidental take permit (ITP) for the Preferred Alternative (described below) under the Endangered Species Act of 1973, as amended (ESA), to Hays County, Texas (the County), to incidentally take golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). Under the RHCP, the County will mitigate for take by establishing a preserve system of 10,000–15,000 acres to mitigate for incidental take of covered species. Each preserve acquisition will be subject to Service approval and will generate mitigation credits based on the number of acres and quality of potential occupied habitat for the covered species.

DATES: We will issue a ROD and make a final permit decision no sooner than 30 days after publication of this notice. Comments on the final EIS and RHCP will be accepted for 30 days after publication of this notice.

ADDRESSES: For where to review documents and submit comments see Reviewing Documents and Submitting Comments in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512/490–0057.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Hays County final environmental impact statement; final regional habitat conservation plan, which we developed in compliance with the agency decision-making requirements of the National Environmental Policy Act (NEPA) of 1969, as amended; and our record of decision. We intend to implement the preferred alternative, which is implementation of the RHCP. We have described all alternatives in detail, and evaluated and analyzed them in our May 2010 final EIS and the final RHCP.

Based on our review of the alternatives and their environmental consequences as described in our final EIS, we intend to implement the preferred alternative (the proposed action). The selected proposed action is the issuance of a section 10(a)(l)(B) incidental take permit (ITP) to Hays County, Texas (the County), for incidental take of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). We refer to both species collectively as "the covered species."

The term of the permit is 30 years (2011–2041). The County will implement mitigation and minimization measures according to the schedule in the RHCP. Under the RHCP, the County will mitigate for take by establishing a preserve system of 10,000–15,000 acres to mitigate for incidental take of covered species. Each preserve acquisition will be subject to Service approval and will generate mitigation credits based on the number of acres, and quality, of potential occupied habitat for the covered species. The number of mitigation credits allowed for each

preserve will be based on, and commensurate with, Service policy and guidelines regarding mitigation (such as, but not limited to, the Guidance for the *Establishment, Use, and Operation of Conservation Banks*) in order to ensure that the quality of the mitigation is equal to or greater than the quality of the habitat impacted.

Background

The County applied to us for an ITP. As part of the permit application, the County developed and will implement the RHCP to meet the requirements of an ITP. Our issuance of an ITP would allow the County to take the covered species resulting from proposed construction, use, or maintenance of public or private land development projects; construction, maintenance, or improvement of transportation infrastructure; installation or maintenance of utility infrastructure; construction, use, or maintenance of institutional projects or public infrastructure; and management activities within Hays County, Texas, during the 30-year ITP term.

The Secretary of the Interior has delegated the authority to the Service to approve or deny an ITP in accordance with the ESA. To act on the County's permit application, we must determine that the RHCP meets the approval criteria specified in the ESA, including our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32. The issuance of an ITP is a Federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR 1500–1508).

On November 2, 2009, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the RHCP and to evaluate alternatives, along with the draft RHCP (74 FR 56655). We included public comments and responses associated with the Draft EIS and Draft RHCP in an appendix to the final EIS.

Purpose and Need

The purpose of the section 10(a)(l)(B) permit is to authorize incidental take associated with the otherwise legal activities listed in the background section.

We identified key issues and relevant factors through public scoping and also through working with a Citizens Advisory Committee; Biological Advisory Team; and comments from the public. These issues included the need for: (1) Development to continue in the County; (2) minimization of impacts on covered species; and (3) mitigation of impacts on covered species. We thoroughly examined these issues in the draft and final EIS and RHCP. No new significant issues arose following publication of the draft documents.

Environmentally Preferable Alternative

Our selected alternative is the Proposed RHCP, the preferred alternative (Alternative B) as described in the final EIS. This alternative provides for the issuance of an ITP to the County for take that would occur as a result of projects described above. This alternative includes implementation of RHCP measures to minimize and mitigate the potential take of federally listed species to the maximum extent practicable. The intent of this alternative is to allow continued development in the County; to minimize the biological, environmental, and socioeconomic impacts; to satisfy the habitat and species needs; and meet issuance criteria of section 10 of the ESA.

For golden-cheeked warblers, the take associated with direct and indirect impacts to 9,000 acres of habitat are authorized over the life of the permit. These impacts shall be mitigated by a combination of purchasing mitigation credits in nearby conservation banks and by purchasing high quality habitat within Hays County for designated golden-cheeked warbler preserves. For black-capped vireos, the take associated with direct and indirect impacts to 1,300 acres of habitat are authorized over the life of the permit. Impacts will be mitigated primarily through habitat restoration, habitat management, enhancement of existing protected black-capped vireo habitat, or an alternate, Service-approved mitigation program.

We considered three additional alternatives in the final EIS:

Alternative A (No Action): The No Action alternative assumed that we would not issue a regional permit for the County. Although development could occur on lands not occupied by endangered species, development activities that would cause take of listed species would require individual authorizations through section 7 or section 10(a)(1)(B) of the ESA. Individual entities could also elect to avoid take on properties containing endangered species by avoiding direct and indirect impacts on the species (*i.e.,* take-avoidance). Processing individual section 10(a) permits could cause delays in permit issuance, because we often take 1 to 2 years to process an individual permit.

Alternative C (Moderate Preserve System with a Take Limit): Compared with that under Alternative B, this alternative features the acquisition of a modestly sized, pre-determined preserve system and limits the amount of incidental take that would be authorized by the ITP. This alternative illustrates a conservation program that could be relatively easy for the County to afford, but (due to relatively smaller size of the preserve system compared to the proposed RHCP) might not satisfy the anticipated need for incidental take authorization over the duration of the plan.

Alternative D (Large-scale Preserve System): Compared with that under Alternative B, this alternative involves a conservation program that utilizes a pre-determined preserve approach. Under this alternative, the preserve system would be large enough to authorize the incidental take of any remaining golden-cheeked warbler or black-capped vireo habitat in the County, outside of the target acquisition area of the preserve system, during the duration of the plan.

Decision

We intend to issue an ITP allowing the County to implement the preferred alternative (Alternative B), as it is described in the final EIS. This intention is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the ITP, including all terms and conditions governing the permit. Implementation of this decision requires adherence to all of the minimization and mitigation measures specified in the RHCP, as well as monitoring and adaptive management measures.

Rationale for Decision

We intend to select the preferred alternative (Alternative B) for implementation based on multiple environmental and social factors, including potential impacts and benefits to covered species and their habitat, the extent and effectiveness of minimization and mitigation measures, and social and economic considerations.

In order for us to be able to issue an ITP, we must ascertain that the RHCP meets the criteria set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination. These criteria, and how the RHCP satisfies these criteria, are summarized below:

1. The taking will be incidental. We find that the take will be incidental to otherwise lawful activities, including the proposed construction, use, or maintenance of public or private land

development projects; construction, maintenance, or improvement of transportation infrastructure; installation or maintenance of utility infrastructure; construction, use, or maintenance of institutional projects or public infrastructure; and management activities. The take of individuals of covered species will be primarily due to habitat destruction and/or alteration.

2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings. The County has committed to a wide variety of conservation measures, land acquisition, management activities, monitoring, adaptive management, and other strategies designed to avoid and minimize harm to the covered species and mitigate for any unavoidable loss. Impacts to the covered species will be minimized and mitigated as described in the environmentally preferable alternative section above.

3. The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided. The County has developed the RHCP and committed to fully funding all of the obligations necessary for its implementation. These obligations include the cost for purchase and management of golden-cheeked warbler and black-capped vireo, mitigation lands in perpetuity, enforcement of conservation easements, and monitoring of species populations and habitat. In addition, the County has committed to implement adaptive management measures that: identify areas of uncertainty and questions that need to be addressed to resolve such uncertainty; developed alternative management strategies and determine which experimental strategies to implement; integrate a monitoring program that is able to acquire the necessary information for effective strategy evaluation; and incorporate feedback loops that link implementation and monitoring to the decision-making process that result in appropriate changes in management. To accomplish RHCP implementation, the County estimated that costs could total up to $182.6 million. The County will fund the actual costs of implementing the RHCP by application and mitigation fees, the County General maintenance and operations fund contributions, and the County Conservation Investments.

The Service's No Surprises Assurances are discussed in the RHCP, and measures to address changed and unforeseen circumstances have been identified. Adaptive management in the form of conservation, mitigation, or management measures and monitoring will be implemented to address changed circumstances over the life of the permit that were able to be anticipated at the time of RHCP development. Unforeseen circumstances would be addressed through the Service's close coordination with the County in the implementation of the RHCP. The County has committed to a coordination process to address such circumstances.

We have, therefore, determined that the County's financial commitment and plan, along with the County's willingness to address changed and unforeseen circumstances in a cooperative fashion, is sufficient to meet this criterion.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. As the Federal action agency considering whether to issue an ITP to the County, we have reviewed the issuance of the ITP under section 7 of the ESA. Our biological opinion concluded that issuance of the ITP will not jeopardize the continued existence of the golden cheeked warbler and black capped vireo in the wild. No critical habitat has been designated for either of the covered species, and thus none will be affected.

5. The applicant agrees to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP. We have cooperated with the County in the development of the RHCP. We commented on draft documents, participated in advisory group meetings, and worked closely with the County in every step of plan and document preparation, so that conservation of the covered species would be assured and recovery would not be jeopardized. The RHCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the RHCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in conservation measures can be implemented if measures prove ineffective or impacts exceed estimates. It is our position that no additional measures are required to implement the intent and purpose of the RHCP to those detailed in the RHCP and its associated ITP.

We have determined that the preferred alternative best balances the protection and management of suitable habitat for covered species, while allowing and providing a streamlined process for ESA compliance for continued development in Hays County. Considerations used in this decision include: (1) Mitigation will benefit the golden cheeked warbler and black capped vireo, mitigation lands will be managed for the species in perpetuity, and other conservation measures will protect and enhance habitat; (2) mitigation measures for the covered species will fully offset anticipated impacts of development to the species and provide recovery opportunities; and (3) the RHCP is consistent with the golden cheeked warbler and black capped vireo recovery plans.

Section 9 of the Act and its implementing regulations prohibit the "taking" of threatened or endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities.

Reviewing Documents and Submitting Comments

Please refer to TE–220793–0 when requesting documents or submitting comments. You may obtain copies of the final EIS and final RHCP by going to the Hays County Regional Habitat Conservation Plan Web site at *http://hayscountyhcp.com/documents*. Alternatively, you may obtain compact disks with electronic copies of these documents, as well as the draft ROD, by writing to Mr. Adam Zerrenner, Field Supervisor, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974. The application, final RHCP, final EIS, and draft ROD will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the Austin office. During the public comment period (see **DATES**), submit your written comments or data to the Field Supervisor at the Austin address.

Public comments submitted are available for public review at the Austin address listed above. This generally means that any personal information you provide us will be available to anyone reviewing the public comments (see the Public Availability of Comments section below for more information).

A limited number of printed copies of the final EIS and final RHCP are also available for public inspection and review at the following locations (by appointment only at government offices):

- Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240;
- U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4012, Albuquerque, NM 87102;
- San Marcos Public Library, 625 E. Hopkins Street, San Marcos, TX, 78666–6313;

• Hays County Precinct 3 Office, 14306 Ranch Rd 12, Wimberley, TX; 78676, and

• Hays County Precinct 4 Office, 101 Old Fitzhugh Rd, Dripping Springs, TX, 78620.

Persons wishing to review the application or draft ROD may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, NM 87103.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

December 7, 2010.

Joy E. Nicholopoulos,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 2011–11761 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000; WYW161248]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain coal resources in the Belle Ayr North Coal Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m., on Wednesday, July 13, 2011. Sealed bids must be submitted on or before 4 p.m., on Tuesday, July 12, 2011.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Tyson Sackett, Acting Coal Coordinator, at 307–775–6258, and 307–775–6487, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Alpha Coal West, Inc. (formerly RAG Coal West, Inc.), Gillette, Wyoming. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following described lands located approximately 10 miles south-southeast of Gillette, Wyoming and east of State Highway 59.

T. 48 N., R. 71 W., 6th Principal Meridian

Sec. 17, lots 13 and 14;
Sec. 18, lots 17 through 19 inclusive;
Sec. 19, lots 5 through 19 inclusive;
Sec. 20, lots 3 through 7 inclusive and lots 9 through 16 inclusive;
Sec. 21, lots 13 and 14;
Sec. 28, lots 3 through 6 inclusive; and
Sec. 29, lots 1 and 6.

Containing 1,671.03 acres, more or less, in Campbell County, Wyoming.

The tract is adjacent to Federal and private leases along the northern lease boundary of the Belle Ayr mine, and to Federal leases along the southwestern lease boundary of the Caballo mine, and to the Caballo West LBA along the north. It is also adjacent to additional unleased Federal coal to the west and north. The tract is crossed by Bishop Road along its northeastern boundary.

All of the acreage offered has been determined to be suitable for mining. Features such as Bishop Road, utilities, and pipelines can be moved to permit coal recovery. In addition, numerous producing coal bed natural gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of the future income stream from the coal lease will consider reasonable compensation to the gas lessee for lost production of natural gas when the wells are bought out but by the coal lessee. The surface estate of the tract is owned by Alpha Coal West, Inc.

The tract contains surface mineable coal reserves in the Wyodak-Anderson coal zone currently being recovered in the adjacent, existing mines. On the LBA tract, there is one recoverable seam, the Wyodak, which ranges from about 72 to 78 feet thick. The Wyodak seam is continuous over the entire tract with no outcrops or subcrops. Overburden depths to this seam range from 278 to 317 feet thick on the LBA tract. The tract contains an estimated 221,734,800 tons of mineable coal. This estimate of mineable reserves includes the main seam mentioned above but does not include any tonnage from localized seams or splits containing coal less than 5 feet thick. Also, it does not include the adjacent private leases although these are expected to be mined in conjunction with the LBA tract. The total mineable stripping ratio of the coal in bank cubic yards per ton is about 4.2:1. Potential bidders for the LBA tract should consider the recovery rate expected from thick seam mining.

The Belle Ayr North LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8,542 British Thermal Units per pound containing about 0.34 percent sulfur. These quality averages place the coal reserves in the lower part of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The BLM Wyoming State Office Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m. local time, on Tuesday, July 12, 2011, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease that may be issued as a result of this coal lease sale will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by surface mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at

the address above. Case file documents for case WYW161248 are available for inspection at the BLM Wyoming State Office.

Donald A. Simpson,

State Director.

[FR Doc. 2011–11654 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 048810, LLCAD06000, L51010000.FX0000, LVRWB09B2600]

Notice of Availability of the Final Environmental Impact Statement for Palen Solar I, LLC's Palen Solar Power Plant (PSPP) and Proposed California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Proposed California Desert Conservation Area (CDCA) Plan Amendment/Final Environmental Impact Statement (EIS) for the Palen Solar Power Plant project and by this notice is announcing its availability.

DATES: The publication of the Environmental Protection Agency's (EPA) Notice of Availability (NOA) of this Final EIS in the **Federal Register** initiates a 30-day public comment period. In addition, the BLM planning regulations state that any person who meets the conditions as described in the regulations at 43 CFR 1610.52 may protest the BLM's Proposed CDCA Plan Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the EPA publishes its notice in the **Federal Register.** The protest procedures are described in the "Dear Reader" letter accompanying the Proposed Plan Amendment/Final EIS.

ADDRESSES: Copies of the Palen Proposed CDCA Plan Amendment/Final EIS have been sent to affected Federal, state, and local government agencies and to other stakeholders. You may send your comments to the Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262. Copies are also available for public inspection at this address. Interested persons may also review the document at the following Web site: *http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Palen_Solar_Power_Project.html.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), *Attention:* Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Mail: BLM Director (210), *Attention:* Brenda Williams, 20 M Street, SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: For further information contact Allison Shaffer, BLM Project Manager, telephone (760) 833–7100; 1201 Bird Center Drive, Palm Springs, California 92262 or e-mail *CAPSSolarPalen@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Palen Solar I, LLC (Palen), a wholly-owned subsidiary of Solar Millennium, Inc., has submitted a right-of-way (ROW) application to the BLM for development of the proposed Palen project, consisting of two parabolic-trough solar thermal power plants, each of which has a "solar field" comprised of rows of parabolic mirrors focusing solar energy on collector tubes. The tubes would carry heated oil to a boiler that sends live steam to a steam turbine. The project would be built in 2 phases which are designed to generate in total approximately 500 megawatts (MW) of electricity at full development. The proposed ROW would encompass approximately 5,200 acres; the disturbed area would encompass approximately 3,107 acres. The project is in Riverside County, California, 10 miles east of Desert Center along Interstate 10 halfway between the cities of Indio and Blythe.

The major components and features of the proposed Palen project include the two power plants, an access road, operations facilities (office, warehouse, *etc.*), a switchyard, an electrical transmission line (which will connect to Southern California Edison's planned Red Bluff substation, 10 miles west of the Palen project site), and two water wells. This dry-cooled power plant would use approximately 300 acre-feet of water per year for feed water makeup, dust control, domestic uses, and mirror washing obtained from on-site water wells.

The BLM's purpose and need for the Final EIS is to respond to Palen's application for a ROW grant to construct, operate, and decommission a solar thermal facility on public lands in compliance with FLPMA, the BLM ROW regulations, and other applicable Federal laws. The BLM will decide whether to grant, grant with modification, or deny a ROW to Palen for the proposed project. The CDCA Plan (1980, as amended), while recognizing the potential compatibility of solar generation facilities with other uses on public lands, requires that all sites proposed for power generation or transmission not already identified in the plan be considered through the plan amendment process. If the BLM decides to grant a ROW for this project, the CDCA Plan would be amended as required. In response to the application received from Palen, the BLM's proposed action is to authorize the Palen project and amend the CDCA Plan to identify the project area as suitable for solar energy production.

In addition to the proposed action, the BLM is analyzing the following action alternatives: Two reconfigured 500–MW alternatives designed to reduce impacts to desert washes, dune habitat, and the Mojave fringe-toed lizard, and a smaller 375–MW alternative. The reconfigured 500–MW alternative that has as an option to use 240 acres of private land, if available, is the preferred alternative. The Final EIS also analyzes a no action alternative that would not approve a CDCA Plan amendment and two no project alternatives that reject the project, but amend the CDCA Plan to: (1) Designate the project area as available to future solar energy power generation projects; or (2) designate the project area as unavailable to future solar energy power generation projects. The BLM will take into consideration the provisions of the Energy Policy Act of 2005 and Secretarial Orders 3283—"Enhancing Renewable Energy Development on the Public Lands", and 3285A1—"Renewable Energy Development by the Department of the Interior" in responding to the PSPP application.

The Final EIS evaluates the potential impacts of the proposed PSPP and CDCA Plan Amendment on air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, impacts to Joshua Tree National Park, and other resources.

A Notice of Availability for the Palen Draft CDCA Plan Amendment/Draft EIS was published by EPA in the **Federal Register** on April 7, 2010 (75 FR 17765). The formal 90-day comment period ended on July 1, 2010. Comments were considered and incorporated as appropriate into the Proposed CDCA Plan Amendment/Final EIS. Public comments resulted in the addition of clarifying text and development of a modified alternative but did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the Palen project may be found in the "Dear Reader Letter" of the Proposed CDCA Plan Amendment/Final EIS and at 43 CFR 1610.5–2. E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 208–5010 and e-mails to *Brenda_Hudgens-Williams@blm.gov.* All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 1506.10, 43 CFR 1610.2, and 1610.5.

James W. Keeler,

Acting Deputy State Director, California.

[FR Doc. 2011–11657 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate a Cultural Item: Montana Historical Society, Helena, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Montana Historical Society, Helena, MT, that meets the definition of a sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The cultural item is a split horn bonnet headdress (X1892.01.38), which has a cap of animal skin and is covered with strips of ermine. The split horns are attached at either side and are wrapped with a woven wool sash of predominately red wool. Yellow or green twill weave tape is tied to the base of the horns along with a different pattern of red sash. The horn tips are joined by a strand of blue and white beads. The tips are decorated with blue and yellow horse hair, brass hawk bells, ermine strips with red feathers, and large blue beads. At the base of the horns are 16 inch strands of red wool yarn in a bundle. Ermine tubes around the lower edge of the cap are 10–12 inches long. The ermine strips and tubes are attached in a variety of ways. They are decorated with either large beads, red wool yarn, red and blue feathers, or porcupine quills. Running horizontally under the ermine on the outside of the cap are six brass buttons decorated in low relief with floral and leaf motifs. The buttons are inserted into the cap by means of a shank, and have been secured inside the cap with a strip of leather through the eyes. Below the buttons, at the base of the cap, is a piece of leather in upside down "V" pattern. A narrow strip of leather appears to lace across this area. A red stroud strip is just above the face.

According to museum records this bonnet was acquired by Major R. A. Allen "from the Blackfeet, Bloods, and Piegan Indians," while serving as the United States Indian Agent for the Blackfeet Agency, Montana Territory, between 1884 and 1886. In 1892, Allen loaned it to the Montana Historical Society. Subsequently, it was purchased by William Andrus Clark, who donated it to the Society's collections in 1900.

Consultation with Blackfeet tribal and religious leaders confirmed that the bonnet originated from the Blackfeet, it is a ceremonial artifact associated with a religious society, and it is required for the practice of a traditional religion by contemporary adherents. The present-day Blackfoot Confederacy (Blackfeet Tribe, Blood Nation of Montana, Piegan Nation of Canada, and the Siksika Nation of Canada) is descended from the four tribes of the Blackfoot Confederacy as constituted during the 1880s, and is represented in the United States by the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

Officials of the Montana Historical Society have determined, pursuant to 25 U.S.C. 3001(3)(C), that the one cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by present-day adherents. Officials of the Montana Historical Society also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Blackfoot Confederacy, which is represented by the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Jennifer Bottomly-O'looney, Curator, Montana Historical Society, 225 North Roberts St., Helena, MT 59620, telephone (406) 444–4711, before June 13, 2011. Repatriation of the sacred object to the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana may proceed after that date if no additional claimants come forward.

The Montana Historical Society is responsible for notifying the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11869 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate a Cultural Item: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA, that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is identified in museum records as a Shaman's leather belt (catalog number 1–27141). In 1929, museum records identified the cultural item as being "Athabascan," "Bear River Tribe," and from Humboldt County, CA. The belt was donated to the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, by Dr. and Mrs. J.O. Nomland who had received it from its owner, Norma Coonskin, a Bear River elder.

Museum records confirm that the belt had originally belonged to Mrs. Nora Coonskin, a traditional elder of the Bear River Band. In 2008 and 2009, the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, consulted with the Bear River Band of the Rohnerville Rancheria regarding the ownership of the belt. Consultation evidence presented by the Bear River Band of the Rohnerville Rancheria shows that the belt is a sacred object, and the museum agrees with all the evidence presented and will repatriate the object.

Officials of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, have determined, pursuant to 25 U.S.C. 3001(3)(C), that the one object described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Bear River Band of the Rohnerville Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Dr. Anthony M. Garcia, Repatriation Coordinator, Phoebe A. Hearst Museum of Anthropology, 103 Kroeber Hall, University of California, Berkeley, Berkeley, CA 94720–3712, telephone (510) 643–5283, before June 13, 2011. Repatriation of the sacred object to the Bear River Band of the Rohnerville Rancheria, California, may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, is responsible for notifying the Bear River Band of the Rohnerville Rancheria, California, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11868 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate a Cultural Item: Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Museum of Anthropology at Washington State University, Pullman, WA, that meets the definition of unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

One lot of stone, bone, and glass beads was given to the Museum of Anthropology at Washington State University on an unknown date, but before 1995. The beads were glued to a piece of cardboard and labeled "Umatilla, Oregon." This reference is believed to be to the old town site of Umatilla, Umatilla County, OR, which was inundated by the reservoir behind John Day Dam. The Old Umatilla town site is also known as archeological site 35UM1. The site is considered to be a prehistoric and historic age Umatilla village that includes a cemetery that dates from approximately 500 B.C. to A.D. 1700. Multiple archeological excavations have been performed at site 35UM1, including the removal of over 230 human burials. In addition to archeological excavations, the Old Umatilla town site was the location of massive grave looting prior to inundation. The lot of beads is identical to the materials and style of manufacture of the funerary items associated with these burials. Therefore, officials of the Museum of Anthropology at Washington State University have determined that this lot of stone, bone, and glass beads is very likely to have been removed from an American Indian grave.

The Old Umatilla town site lies within the traditional lands of the present-day Confederated Tribes of the Umatilla Indian Reservation, Oregon. The Confederated Tribes of the Umatilla Indian Reservation, Oregon, was established by Treaty in 1855 and consists of three tribes: Cayuse, Umatilla, and Walla Walla. Each of these tribes belong to the Sahaptin language group and historically their combined territories occupied over 6 million acres of land in southeastern Washington and northeastern Oregon. The Umatilla reservation and ceded lands roughly encompass the area bounded by the Columbia and Snake Rivers on the north, Willow Creek on the west and the Tucannon River on the east, and include the Old Umatilla town site location.

Officials of the Museum of Anthropology at Washington State University have determined, pursuant to 25 U.S.C. 3001(3)(B), that the one lot described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Museum of

Anthropology at Washington State University also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Mary Collins, WSU Museum of Anthropology, P.O. Box 644910, Pullman, WA 99164, telephone (509) 335–4314, before June 13, 2011. Repatriation of the unassociated funerary object to the Confederated Tribes of the Umatilla Indian Reservation, Oregon, may proceed after that date if no additional claimants come forward.

The Museum of Anthropology at Washington State University is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation, Oregon, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11864 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Field Museum of Natural History (Field Museum), Chicago, IL, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The three cultural items are copper pendants. One copper pendant (Field Museum catalog number 279396) has an oblong shape and measures 6.5 cm x 2.4 cm. The second copper pendant (Field Museum catalog number 279544) has a roughly triangular shape with a hole at the top in which fiber runs through, and measures 7.1 cm x 7.1 cm. The third copper pendant (Field Museum catalog number 279567) has an oblong shape and measures 7.3 cm x 5 cm.

According to Field Museum records, the three cultural items were removed from Franklin County, WA. At an unknown date, Donald O. Boudeman acquired the items for the Kalamazoo Valley Museum, Kalamazoo, MI. In 1999, the Field Museum of Natural History acquired the cultural items as a gift from the Kalamazoo Valley Museum, and accessioned them into its collections that same year.

The three cultural items have been identified as Native American through museum records, scholarly publications, and consultation information provided by representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group.

Officials of the Field Museum of Natural History have determined, pursuant to 25 U.S.C. 3001(3)(B), that the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Field Museum of Natural History also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Confederated Tribes and Bands of the Yakama Nation, Washington. Furthermore, officials of the Field Museum of Natural History have determined that there is a cultural relationship between the unassociated funerary objects and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 S. Lake Shore Dr., Chicago, IL 60605, telephone (312) 665–7317, before June 13, 2011. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Confederated Tribes and Bands of the Yakama Nation, Washington, may proceed after that date if no additional claimants come forward. The Field Museum of Natural History recognizes the participation of the Wanapum Band, a non-Federally recognized Indian group, during the transfer of the unassociated funerary objects to the Indian tribes.

The Field Museum is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; the Nez Perce Tribe, Idaho, and the Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11863 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Field Museum of Natural History (Field Museum), Chicago, IL, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not

responsible for the determinations in this notice.

The three cultural items are one rolled copper tube or bead and two copper pendants. In 1900, Walter Wyman sold the items to the Field Museum of Natural History. The items were accessioned into the collections of the Field Museum of Natural History that same year.

According to Field Museum of Natural History records, the three items were removed from a Columbia River mound, Umatilla County, OR. The rolled copper tube or bead (Field Museum catalog number 68156) measures 4.8 cm x 1.0 cm. One copper pendant is oblong with a hole at one end (Field Museum catalog number 68165) and measures 7.0 cm x 4.9 cm. The other copper pendant (Field Museum catalog number 68167) is oblong with a hole at one end and measures 7.4 cm x 2.9 cm.

The three cultural items have been identified as Native American through museum records, scholarly publications, and consultation information provided by representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group.

Officials of the Field Museum of Natural History have determined, pursuant to 25 U.S.C. 3001(3)(B), that the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Field Museum of Natural History also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 S. Lake Shore Dr., Chicago, IL 60605, telephone (312) 665–7317, before June 13, 2011. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation, Oregon, may proceed after that date if no additional claimants come forward.

The Field Museum is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11861 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Museum of Anthropology, University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of intent to repatriate cultural items in the possession of the Museum of Anthropology, University of Michigan, Ann Arbor, MI, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1924, a collection containing human remains and a variety of archeological materials was purchased by the University of Michigan from Rev. L.P. Rowland of Detroit, MI. The human remains and many of the artifacts were recovered from the Lake Michigan shore area in Emmet County, MI. A substantial portion of this collection was determined to be culturally affiliated with the Little Traverse Bay Bands of Odawa Indians, Michigan, and were repatriated after publication in the **Federal Register** (62 FR 8265–8266, February 24, 1997). Since that time, two additional individuals were found to have a Native American cultural identity with the Little Traverse Bay Bands of Odawa Indians, Michigan. These individuals were described in a Notice published in the **Federal Register** (74 FR 42094–42095, August 20, 2009), and subsequently repatriated. At that time, 14 pottery sherds that were unearthed by Rowland in the process of disinterring these human remains from the Wequetonsing area were not included as funerary objects. Archeological experts had identified the sherds as Mackinac Ware (800–1000 A.D.), which dated the pottery at least 1,000 years older than the burials. The age of the pottery makes the likelihood that they were fragments of a funerary object(s) deliberately placed with, or left for, these individuals somewhat doubtful. However, given that Rowland indicated that these sherds came from within a burial pit, and lacking the archeological context to make a more definitive determination, museum and tribal consultants have since agreed that the potsherds should accompany the repatriated human remains described in the August 20, 2009, Notice. As such, these cultural items are now considered to be unassociated funerary objects.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Carla Sinopoli, Museum of Anthropology, University of Michigan, Ann Arbor, MI 48109–1079, telephone (734) 764–0485, before June 13, 2011. Repatriation of the unassociated funerary objects to the Little Traverse Bay Bands of Odawa Indians, Michigan, may proceed after that date if no additional claimants come forward.

The Museum of Anthropology, University of Michigan is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11856 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

[2253–665]

National Park Service

Notice of Inventory Completion: Utah State University/College of Eastern Utah Prehistoric Museum, Price, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Utah State University/College of Eastern Utah Prehistoric Museum, Price, UT. The human remains and associated funerary objects were removed from Carbon, Emery, Grand, and San Juan Counties, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Prehistoric Museum professional staff in consultation with representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (formerly the Pueblo of Santo Domingo); Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Northwestern Band of Shoshoni Nation of Utah (Washakie); Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereinafter referred to as "The Tribes").

In 1956, human remains representing a minimum of one individual were removed by a rancher from an unrecorded site on his private land in Nine Mile Canyon, Carbon County, UT. The remains were transferred to the Prehistoric Museum (formerly the Price City Museum) in 1961. No known individual was identified. The five associated funerary objects are one lot of sewn leather clothing, one knotted/woven juniper bark blanket enclosing shredded juniper bark (for padding) and several plant remains, one lot of thick cordage with the remains of rabbit-fur strips, one knotted/plaited juniper bark cradle with leather hood and willow or sumac frame, and one woven reed-grass/phragmites blanket with cordage ties.

In 1950, human remains representing a minimum of one individual were removed from an unrecorded site on private land called "Scarps Ranch" near Indian Creek, in Grand or San Juan County, UT. The remains were transferred to the Prehistoric Museum in 1961. No known individual was identified. No associated funerary objects are present.

In 1954, human remains representing a minimum of one individual, an infant, were removed from an unrecorded site on private property in Nine Mile Canyon, Carbon County, UT, by a rancher. The remains were transferred to the Prehistoric Museum in 1961. No known individual was identified. The seven associated funerary objects are an animal skin/fur wrapped around the infant, one bundle of grasses, maize leaves/husks, miscellaneous plant remains and shredded juniper bark (for padding), one bent, knotted willow/sumac stick cradle frame, one bundle of sticks, and three pieces of leather (used to strap the wrapped infant to the stick cradle frame).

In the 1960s, human remains representing a minimum of one individual were removed from an unknown and unrecorded site in the Green River corridor, probably in Emery County, UT. The remains were given to the Prehistoric Museum in the 1960s. No known individual was identified. The three associated funerary objects are a sewn leather moccasin/sandal fragment, cordage, and shredded juniper bark padding from the burial.

Around 1969 to 1971, human remains representing a minimum of six individuals were accidentally discovered during the construction of the Millsite Reservoir near Ferron, in Emery County, UT. The remains were transferred from the Emery County Sheriff to the Prehistoric Museum circa 1980. No known individuals were identified. The 23 artifacts accompanying the transferred human remains are 3 small basketry fragments, 2 maize cobs, 3 small pieces of cordage, 1 large twist/cache of dogbane fiber, 2 large pine cones, 1 bear claw, 1 bone awl, 1 deer scapula, 2 complete bighorn sheep horns, 1 debitage flake, 1 large D-shaped biface fragment, 1 small animal bone, 1 juvenile animal long bone, 1 lot of several small rodent bones, 1 human coprolite, and an owl pellet.

The individuals described above appear be associated with the prehistoric Native American culture that archeologists have named Fremont.

Between 1989 and 1993, human remains representing a minimum of one individual were removed from "Frank's Place," site 42Cb770, reported to be located on private land in Carbon County, UT, by Brigham Young University as part of a legal excavation. The remains were transferred to and accessioned by the Prehistoric Museum in 1995. No known individual was identified. Two artifacts recovered from the burial cist were accessioned with the burial.

Brigham Young University excavators also reported three other artifacts from the cist containing the burial, but were not sure if they were funerary objects, and did not transfer them to the Prehistoric Museum. The associated funerary objects are two small pieces of chipped stone.

The remains from site 42Cb770 were excavated by Brigham Young University archeologists from inside a slab-lined cist in the floor of a Fremont pithouse located on a natural bench above the floodplain in Nine Mile Canyon, and the ribs from the child were transferred for analyses. The burial has been radiocarbon dated to circa A.D. 1150, consistent with the Fremont culture in Nine Mile Canyon and eastern Utah, thus suggesting its affiliation with the prehistoric Native American culture that archeologists have named Fremont.

At an unknown date, possibly between 1959 and 1983, human remains

representing a minimum of three individuals were removed from unknown sites on private land along the Green River corridor near Green River, probably in Emery or Grand County, UT. These remains were given to the Prehistoric Museum by the landowner circa 1983. No known individuals were identified. A box of associated cultural objects was given to the museum by the same individual and reported to be from the same location. One of the donated items, a turkey-feather blanket, was listed as a "woven burial mat," and so the transferred objects are presumed to be associated funerary objects. The 33 associated funerary objects are 2 small black-on-white bowls, 1 small corrugated, partially reconstructed jar, 1 Mesa Verde black-on-white mug, 1 reconstructed Ivie Creek black-on-white bowl, 1 reconstructed Tusayan bowl fragment, 6 bags of potshcrds (including mostly Fremont grayware but also many decorated Fremont and Anasazi types), 1 tied grass hairbrush, 1 fingerprint in mud/adobe, 1 willow or dogbane knot/cache, 1 turkey-feather blanket, 5 lithic tools, 1 bag of bark fragments, 1 small turkey-feather blanket cordage fragment, 1 piece of charcoal, 5 maize cobs, 2 horn fragments, 1 piece of calcite, and an acorn.

These individuals described above appear to be affiliated with either Ancestral Pueblo/Hisatsinom/Anasazi or Fremont prehistoric cultures.

From approximately 1972 to 1977, following a flash flood, human remains representing a minimum of two individuals were removed from Comb Wash at T37 S, R 20E, Sec 24, at or near the intersection of Comb Wash and Arch Canyon, in San Juan County, UT, by a private individual. The remains were given to the Prehistoric Museum in 1997. No known individuals were identified. No associated funerary objects are present.

Both of the above individuals are Native American males, approximately 30–45 years of age. They both have extreme dental attrition, including caries and excessive wear into both the enamel and dentin, suggesting an association with the Formative period and a diet rich in stone-ground maize. One cranium exhibits extreme occipital/lambdoidal flattening and is very broad, whereas the other is narrow, gracile and vaulted, sinodont, and possibly has some cranial deformation though the occipital is missing. These remains are most likely associated with the ancient Native American culture called Hisatsinom or Anasazi.

Fremont archeological sites differ from contemporary and ancient Puebloan sites in architectural features and material remains, and some Fremont artifact types are unique with respect to other Southwestern, Rocky Mountain or Great Basin material cultures (*e.g.,* Barlow 1997, 2002, 2006). Overall, the constellation of material traits associated with Fremont cultures does not appear to have a modern or ethnographic correlate among living Native American peoples. Peoples of the ancient Fremont culture also appear to have been physically and genetically distinct from Native American people who today inhabit this region. Morphologically, especially in cranial characteristics, Fremont remains generally differ from contemporary Numic-speaking peoples, and also usually lack the distinctive occipital flattening that is common, and even characteristic, of their Puebloan counterparts. This difference is generally attributed to cultural differences in the types of cradleboards or infant carriers used by prehistoric peoples in this region.

By contrast, some Fremont archeological sites in Utah have a strong geographic overlap with later Numic cultures, thus these cultures may be coincident with the latest Fremont occupation of this region. This may be especially true of ethno-Historic Ute Tribes in eastern Utah and possibly also including some Paiute and Shoshone bands and Tribes in other parts of the Fremont culture region. Many areas and some sites with prehistoric Fremont artifacts and rock art in this region have overlapping ethno-Historic Ute or Nuché components; sometimes Ute rock art has been painted over earlier Fremont figures. Also Ute tipi and wickiup sites, and some Ute game or pony drives are found in eastern Utah.

Interpretations of DNA extracted from Fremont remains—albeit mostly from Fremont remains in neighboring areas rather than eastern Utah—suggest a possible genetic relationship between some ancient Fremont people and some members of the Zuni Tribe (and perhaps other modern Puebloan peoples), but do not suggest genetic affiliations with modern Numic-speaking Tribes. Morphological attributes also suggest that Numic peoples are not descended from Fremont peoples. It should also be noted, however, that DNA studies conducted on Fremont remains have yielded varied results and interpretations (*e.g.,* at one time it was suggested that some Fremont were distinctly different from ancestral or modern Puebloans, although today they appear to be related), that published comparisons do not include Hopi DNA, and that recent analyses of the DNA of ancient Puebloan peoples and of individuals from modern Pueblos suggest that the two groups are more closely related to each other than to Fremont. It is not yet understood what the DNA evidence means with respect to ancestor-descendant relationships with modern Puebloan peoples, or whether this evidence indicates intermarriage or social networks with Hisatsinom peoples in the past. In addition, more work is needed for a rigorous scientific assessment of the variability in DNA from different areas within the larger Fremont culture region, which was home to at least five distinct prehistoric Fremont peoples and cultures (*e.g.,* the Great Salt Lake vs. the Sevier vs. Parowan vs. Uintah vs. the San Rafael), and which may reflect concomitant diversity in language, socio-political networks, and possibly genetic affiliation. Nevertheless, it appears that the closest living relatives of ancient Fremont peoples and cultures are likely to be found among modern Pueblo peoples.

It should also be noted that in some areas of eastern Utah, archeological sites sometimes include cultural traits from both ancient Fremont and Hisatsinom/Anasazi/Ancestral Puebloan archeological "cultures." Although the precise nature of the relationship is unclear, archeological evidence from sites in this area, and genetic evidence from Fremont remains, Hisatsinom remains, and modern Puebloan people, indicate that people from these ancient cultures were involved in social and economic relationships, and may share some common ancestors and/or descendants. In fact, in this part of eastern Utah artifacts from both cultures often are found at the same sites. It is common to find some Hisatsinom pottery on Fremont sites in Carbon and Emery Counties, particularly sites that postdate A.D. 1000. Often, varieties of pottery from the Tusayan region are found suggesting increasing economic and/or social networks with Hisatsinom neighbors circa A.D. 1050–1270. In addition, a few human burials from this area, although associated with Fremont sites, exhibit characteristics that suggest Puebloan affiliation or ancestry. In summary, although the Fremont culture of the San Rafael region likely originated from the indigenous Archaic culture of the San Rafael, there is increasing archeological evidence that those ancient people likely had social links to contemporary prehistoric Hisatsinom/Anasazi peoples.

It should also be noted that Hopi Elders have consulted with the Prehistoric Museum about a Hopi cultural/oral tradition that some Fremont people may be ancestral to

several of the northern Hopi Clans, and a belief that some Fremont people joined with Hopi in the Ancestral Tutsqua homeland relatively late in the Prehistoric period, and became part of the Hopi. Hopi elders have also identified similarities between some rock art images in this region and modern Hopi symbols and cultural traditions. These similarities suggest possible movements of ancestral Hopi, and may correlate with Hopi oral traditions about clans completing sacred migrations during the Formative period prior to settling on the Hopi mesas, and/or pilgrimage of some Hopi to ancestral sites in the Fremont region during the late Prehistoric or early ethno-Historic periods.

With respect to prehistoric Hisatsinom/Anasazi human remains, there appears to be cultural continuity between ancient and modern Puebloan cultures in the American Southwest, with a high degree of overlap in both genetic affiliations and archeological attributes, including some artifacts and architectural features. There is increasing evidence from DNA studies supporting genetic relationships between some prehistoric Hisatsinom or Anasazi individuals and modern Zuni, and perhaps other Puebloan peoples. There is also accumulating evidence that some Navajo or Diné may share some material traits with Pueblo cultures, and may have ties to some ancient Puebloan peoples, but it is not reasonable to assume cultural affiliation with the Navajo or Diné at this time, as the latter apparently did not arrive in the Southwest until several hundred years after the deposition of these human remains.

Officials of the Prehistoric Museum have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of 16 individuals of Native American ancestry. Officials of the Prehistoric Museum have also determined, pursuant to 25 U.S.C. 3001(3)(A), that the 73 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Prehistoric Museum have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian Tribe that believes itself to be culturally affiliated with the human remains and/or associated funerary objects should contact K. Renee Barlow, USU/CEU Prehistoric Museum, 150 East Main St., Price, UT 84501, telephone (435) 613–5290, before June 13, 2011. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Prehistoric Museum is responsible for notifying The Tribes that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11812 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Colorado Historical Society (History Colorado), Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the Colorado Historical Society (History Colorado), Denver, CO. The human remains were removed from Canyon de Chelly, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Colorado Historical Society (History Colorado) professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. The Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; and Pueblo of Santo Domingo, New Mexico, were contacted for consultation purposes, but did not attend the consultation meetings.

In 1903, human remains representing a minimum of two individuals were removed from "Massacre Cave," in Canyon de Chelly, AZ. The remains were removed from the cave by collector Charles M. Schenck while on a "tour" of Canyon de Chelly led by Charles L. Day, who operated a nearby trading post. They were donated to the Colorado Historical Society sometime between 1903 and 1932 (catalog numbers 78.98.47 and UHR.1). No known individuals were identified. No associated funerary objects are present.

"Massacre Cave" is a site where an historically documented massacre of at least 90 Navajo men, women, and children took place in 1805, perpetrated by the Spanish military and led by Antonio Narbona. Victims were reportedly left on the surface of the cave. While "Massacre Cave" also has a documented subsurface Basketmaker II/

III component, based on the description of the collecting trip in a 1932 letter from Schenck to the Colorado Historical Society Curator George Woodbury, the remains of these two individuals were collected from the cave's ground surface, and not excavated from subsurface deposits. Osteological analysis indicates that the human remains are Native American and show signs of weathering consistent with prolonged surface exposure.

In 1903, human remains representing a minimum of five individuals were removed from "Sentinel Ruin," in Canyon de Chelly, AZ, by Charles M. Schenck while on a "tour" of Canyon de Chelly led by Charles L. Day. The individuals were donated to the Colorado Historical Society sometime between 1903 and 1932 (catalog numbers UHR.2.A, and UHR.2.B/UHR.108/UHR.122). UHR.2.A represents two individuals and UHR.2.B/UHR.108/UHR.122 represents three individuals. No known individuals were identified. No associated funerary objects are present.

"Sentinel Ruin" is a documented multi-component site with prehistoric occupations from Basketmaker II to Pueblo III, and an historic Navajo occupation in the 1700s and 1800s. The surface component is the historic Navajo component. Schenck collected only from the surface. Archeological documentation after Schenck's visit indicates "Sentinel Ruin" was undisturbed. Osteological analysis identified the remains as Native American, and two individuals show signs of weathering consistent with prolonged surface exposure.

Officials of the Colorado Historical Society have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of seven individuals of Native American ancestry. Lastly, officials of the Colorado Historical Society have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico & Utah.

Representatives of any other Indian Tribe that believes itself to be culturally affiliated with the human remains should contact Bridget Ambler, Curator of Material Culture, Colorado Historical Society, 1560 Broadway, Suite 400, Denver, CO 80202, telephone (303) 866–2303, before June 13, 2011. Repatriation of the human remains to the Navajo Nation, Arizona, New Mexico & Utah may proceed after that date if no additional claimants come forward.

The Colorado Historical Society is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11867 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from St. Mary Parish (formerly Attkapas County), LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Chitimacha Tribe of Louisiana.

Sometime between 1815 and 1833, human remains representing a minimum of two individuals were removed by Agricole Fuselier (b.1765–d.1839) from a cemetery near his family estate near Jeanerette, St. Mary Parish, LA. Mr. Fuselier "procured the skulls" for Dr. Justus Le Beau, who subsequently sent them to Dr. Samuel Morton through Joseph Barabino, prior to April 1833 (Barabino, Letter to Morton, 1834 January 17, ANSP Archives). At this time, the Academy of Natural Sciences in Philadelphia provided storage space for much of Dr. Morton's collection, including the human remains, until his death in 1851. In 1853, the collection was purchased from Dr. Morton's estate and formally presented to the Academy. In 1966, Dr. Morton's collection, including these human remains (L–606–0043 and L–606–0070), was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the museum. No known individuals were identified. No associated funerary objects are present.

Extensive historical documentation, original correspondence, museum records, and Crania Americana (Morton, 1839), identify both sets of human remains as Chitimacha. The human remains exhibit cranial modification. One cranium was either smoked or burned prior to burial, practices which are consistent with the Chitimacha culture, according to the anthropological literature. The remains were collected from a region where the western Chitimacha lived in at least two permanent villages at the time of the first documented encounter between French explorers and the Chitimacha in 1699, and where the Chitimacha Reservation was put into trust in 1919. Representatives from the Chitimacha Tribe of Louisiana indicate that they are familiar with the burial site and are the descendants of the group identified in the historical documents.

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of two individuals of Native American ancestry. Lastly, officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native

American human remains and the Chitimacha Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Richard Hodges, Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South St., Philadelphia, PA 19104–6324, telephone (215) 898–4050, before June 13, 2011. Repatriation of the human remains to the Chitimacha Tribe of Louisiana may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Chitimacha Tribe of Louisiana that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11855 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary items in the possession and control of the Museum of Anthropology at Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from Grant County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Museum of Anthropology at Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington.

In 1961, human remains representing a minimum of three individuals were removed from sites 45GR111 and 45GR121, Grant County, WA. The burials were excavated from three cairn marked talus burials in the Lower Grand Coulee/Sun Lakes region. The work was done in conjunction with an archeological survey of the region directed by Richard Daugherty of Washington State University. No known individuals were identified. The 22 associated funerary objects are 3 lots of basketry fragments, 2 lots of mammal remains, 2 lots of wood fragments, 2 lots of snail shells, 1 lot of bark fragments, 8 lots of bag residue, 2 lots of shell beads, 1 digging stick handle, and 1 stone scraper.

The manner of internment and the character of the associated funerary objects are distinctive for Native American burials of the late prehistoric through historic periods on the Columbia Plateau. The site is within the judicially established aboriginal territory of the Confederated Tribes of the Colville Reservation, Washington. Tribal oral tradition and anthropological and historical research indicate the sites are within an area occupied by the Moses Columbia, who are legally represented by the Confederated Tribes of the Colville Reservation, Washington.

Officials of the Museum of Anthropology at Washington State University have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Museum of Anthropology at Washington State University also have determined, pursuant to 25 U.S.C. 3001(3)(A), that the 22 objects (20 lots and 2 individual objects) described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Anthropology at Washington State University have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Collins, Museum of Anthropology at Washington State University, PO Box 644910, Pullman, WA 99164, telephone (509) 335–4314, before June 13, 2011. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Museum of Anthropology at Washington State University is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11854 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Logan Museum of Anthropology, Beloit College, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Logan Museum of Anthropology, Beloit College, Beloit, WI. The human remains were removed from Langlade County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Logan Museum of Anthropology, Beloit College, professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the

Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and Stockbridge Munsee Community, Wisconsin.

In 1968 or earlier, human remains representing a minimum of one individual were recovered during installation of a septic tank with a backhoe at the Pine Point Resort, Pickerel Lake, Ainsworth, Langlade County, WI. The remains were recorded as "Historic Indian," suggesting funerary objects may have been present, although none are found in the collection. No known individual was identified. No associated funerary objects are present.

The Pine Point site was surveyed and recorded as 47Lg21 (LMA 21493W), in conjunction with the 1968 Wild Rivers Project Site Survey, directed by Dr. Robert J. Salzer, Beloit College Professor of Anthropology. The owners of the Pine Point Resort donated the recovered remains to the Logan Museum of Anthropology in 1968. The remains are Native American based on morphological evidence. Langlade County is near historic Ojibwa and Menominee settlements. The Federally-recognized Menominee Indian tribe is the Menominee Indian Tribe of Wisconsin. The Federally-recognized Ojibwa Indian tribes that are affiliated with the area are the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Community, Wisconsin; and Sokaogon Chippewa Community, Wisconsin.

Officials of the Logan Museum of Anthropology, Beloit College, have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the Logan Museum of Anthropology, Beloit College, have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Community, Wisconsin; and Sokaogon Chippewa Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact William Green, Director, Logan Museum of Anthropology, Beloit College, Beloit, WI 53511, telephone (608) 363–2119, fax (608) 363–7144, before June 13, 2011. Repatriation of the human remains to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Community, Wisconsin; and Sokaogon Chippewa Community, Wisconsin, may proceed after that date if no additional claimants come forward.

The Logan Museum of Anthropology, Beloit College, is responsible for notifying the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and Stockbridge Munsee Community, Wisconsin, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11833 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Utah Museum of Natural History, Salt Lake City, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the Utah Museum of Natural History, Salt Lake City, UT. The human remains were removed from Snow Canyon State Park, Washington County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Utah Museum of Natural History professional staff and a report sent to representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Skull Valley Band of Goshute Indians of Utah; and the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah, on January 15, 2010. Consultation took place with the Confederated Tribes of the Goshute Reservation, Nevada and Utah, and Paiute Indian Tribe of Utah.

In 1985, human remains representing a minimum of one individual were removed from Snow Canyon State Park, Washington County, UT, by hikers and reposited by Anasazi State Park. The human remains were transferred to the Utah Museum of Natural History and accessioned into the collections in 1997. No known individual was identified. No associated funerary objects are present.

The result of an osteological analysis indicates that the individual is Native American and likely of Numic descent. Based on the geographical location of the burial it has been determined that the individual was likely a member of the Shivwits Band of the Paiute Indian Tribe of Utah, who inhabited this area

during the protohistoric and contact periods.

Officials of the Utah Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Utah Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Shivwits Band of the Paiute Indian Tribe of Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Duncan Metcalfe, Utah Museum of Natural History, 1390 E. Presidents Circle, Salt Lake City, UT 84112, telephone (801) 581–3876, before June 13, 2011. Repatriation of the human remains to the Shivwits Band of the Paiute Indian Tribe of Utah may proceed after that date if no additional claimants come forward.

The Utah Museum of Natural History is responsible for notifying the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah; Skull Valley Band of Goshute Indians of Utah; and the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11827 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Logan Museum of Anthropology, Beloit College, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Logan Museum of Anthropology, Beloit College, Beloit, WI. The human remains and associated funerary objects were removed from Ashland County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Logan Museum of Anthropology, Beloit College, professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and Stockbridge Munsee Community, Wisconsin.

In 1975, human remains representing a minimum of one individual ("Burial 2") were removed from the Marina site (47As24), La Pointe Township, Madeline Island, Ashland County, WI, by crews from Beloit College. The excavation was directed by Robert J. Salzer under the terms of an agreement between Beloit College and the Interagency Archeological Services branch of the National Park Service. No known individual was identified. No associated funerary objects are present.

In 1977, human remains representing a minimum of one individual ("Burial 12") were removed from the Marina site (47As24), La Pointe Township, Madeline Island, Ashland County, WI, by workers installing a sewer line. No known individual was identified. The nine associated funerary objects are copper bracelets.

The Marina site is a multi-component habitation and mortuary site that represents at least 200 years of human activity at La Pointe, WI, including Indian villages and cemeteries as well as Catholic missions. It was a focal point of the western Great Lakes fur trade. Near the end of the fur trade era, Frederick Baraga established a cemetery for his Catholic mission's Indian and mixed-blood congregation. Archeological excavations were conducted in 1975 to salvage information that was under threat of destruction from planned construction of a sewer main. All human remains excavated from the site, with the exception of those reported here, were transferred in 1976 from Beloit College to the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin.

Burial 2 was located in the central part of the Marina site near several other burials that likely date to circa 1715–1770. Burial 12 was located in close proximity to the Baraga Mission cemetery established in the 1830s and most likely dates to the mission era or later (post 1835). Both individuals are Native American based on the archeological context. La Pointe is a traditional home of the Lake Superior Ojibwa, although other tribes lived there periodically. The Federally-recognized Lake Superior Ojibwa Indian tribes affiliated to this area are the Bad River Band of Lake Superior Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Community of Wisconsin; and Sokaogon Chippewa Community, Wisconsin.

Officials of the Logan Museum of Anthropology, Beloit College, have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Logan Museum of Anthropology, Beloit College, also have determined, pursuant to 25 U.S.C. 3001(3)(A), that the nine objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Logan Museum of Anthropology, Beloit College, have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Bad River Band of Lake Superior Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Community of Wisconsin; and

Sokaogon Chippewa Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact William Green, Director, Logan Museum of Anthropology, Beloit College, Beloit, WI 53511, telephone (608) 363–2119, fax (608) 363–7144, before June 13, 2011. Repatriation of the human remains and associated funerary objects to the Bad River Band of Lake Superior Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Community of Wisconsin; and Sokaogon Chippewa Community, Wisconsin, may proceed after that date if no additional claimants come forward.

The Logan Museum of Anthropology, Beloit College is responsible for notifying the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and Stockbridge Munsee Community, Wisconsin, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11809 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Museum of Anthropology, Washington State University, Pullman, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary items that were in possession of the Museum of Anthropology at Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from Asotin County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Museum of Anthropology at the Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group.

This notice corrects the minimum number of individuals for a Notice of Inventory Completion published in the **Federal Register** (75 FR 41883–41884, July 19, 2010). After repatriation and reburial, a re-evaluation of inventory numbers by a tribal representative resulted in an increase in the number of individuals from two to six in one of the two sites described in the previously published notice.

Paragraph number 4 is corrected by substituting the following paragraph:

In June and July of 1951, human remains representing a minimum of six individuals were removed from the Steptoe Burial site (45AS2), in Asotin County, WA. The burials were removed as part of an archeological study performed by the Department of Anthropology at Washington State University under the direction of Dr. Richard Daugherty. No known individuals were identified. The 57 associated funerary objects are 4 projectile points, 2 scrapers, 1 bone scraper handle, 1 lot of mussel shells, 1 lot of red ochre, 2 bone awls, 1 lot of charcoal, 1 pestle, 2 lots of cedar wood fragments, 3 lots of shell beads, 1 stone bead necklace, 2 bifaces, 5 lots of bag residue, 4 lots of animal bones, 1 stone net sinker, 1 lot of tin can fragments, 2 fragments of flatware, 1 lot of buttons, 6 lots of fabric fragments, 3 lots of nails, 2 lots of metal fragments, 3 lots of glass beads, 3 lots of modified wood fragments, and 5 lots of leather fragments.

Paragraph 10 is replaced with the following:

Officials of the Museum of Anthropology at the Washington State University have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of nine individuals of Native American ancestry. Officials of the Museum of Anthropology at the Washington State University also have determined, pursuant to 25 U.S.C. 3001(3)(A), that the 59 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Anthropology at the Washington State University, have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary items should contact Mary Collins, Director, Museum of Anthropology at the Washington State University, P.O. Box 62291, Pullman, WA 99164–4910, telephone (509) 335–4314. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, occurred after the 30 day comment period expired for the original July 19, 2010, Notice of Inventory Completion.

The Museum of Anthropology at the Washington State University is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11852 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

[2253–665]

National Park Service

Notice of Inventory Completion: Western Michigan University, Anthropology Department, Kalamazoo, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Western Michigan University, Department of Anthropology, has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Western Michigan University, Department of Anthropology. Disposition of the human remains to the Indian tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Western Michigan University, Department of Anthropology, at the address below by June 13, 2011.

ADDRESSES: LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387–2753.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Western Michigan University, Department of Anthropology, Kalamazoo, MI. The human remains were removed from Newaygo County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Western Michigan University, Department of Anthropology, professional staff in consultation with representatives of the Little River Band of Ottawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

History and Description of the Remains

Between 1967 and 1968, human remains representing a minimum of three individuals were removed from Section 11, Lilley Township, Sission Lake Site, Newaygo County, MI, during excavation by the (now former) Newaygo County Archaeological Society. After recovery, the remains and funerary objects were sent to Western Michigan University for further analysis and curation by Dr. Robert Sundick. No known individuals were identified. The funerary objects were identified in the excavators' original notes and originally listed in the museum inventory, but are not currently found in the collection. Therefore, the associated funerary objects are missing from the collection.

The remains were recovered from a mound context. Two of the crania are adults and the third is from an adolescent. The skeletal remains are primarily cranium and longbones, suggesting the possibility of secondary internments. The Sission Lake Site is dated to the Middle to Early Late Woodland period (circa A.D. 600–800) based on the typologies of the funerary objects described in the excavators' notes.

Determinations Made by the Western Michigan University, Department of Anthropology

Officials of the Western Michigan University, Department of Anthropology, have determined that:

- Based on removal from a mound, Woodland time period of associated artifacts, and skeletal and dental morphology, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Multiple lines of evidence, including the Treaty of Washington (1836), continued occupation, and oral tradition, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Little River Band of Ottawa Indians, Michigan.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Little River Band of Ottawa Indians, Michigan.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387–2753, before June 13, 2011. Disposition of the human remains to the Little River Band of Ottawa Indians, Michigan, may proceed after that date if no additional requestors come forward.

The Western Michigan University, Department of Anthropology, is responsible for notifying the Little River Band of Ottawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; and the Pokagon Band of Potawatomi Indians, Michigan and Indiana, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11851 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Western Michigan University, Anthropology Department, Kalamazoo, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Western Michigan University, Anthropology Department, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Western Michigan University, Anthropology Department. Disposition of the human remains and associated funerary objects to the tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Western Michigan University, Department of Anthropology, at the address below by June 13, 2011.

ADDRESSES: LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387–2753.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Western Michigan University, Anthropology Department, Kalamazoo, MI. The human remains and associated funerary objects were removed from Allegan County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Western Michigan University, Department of Anthropology, professional staff in consultation with representatives of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan. The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan and Saginaw Chippewa Indian Tribe of Michigan have sent the Western Michigan University, Department of Anthropology, letters of support and do not object to disposition of the human remains and associated funerary objects described in this notice to the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

History and Description of the Remains

In 1968, human remains representing a minimum of one individual were removed from Allegan Dam Site, in Valley Township, Allegan County, MI, during an excavation by a Western Michigan University archeological field school under the direction of Dr. Elizabeth B. Garland. The burial consisted of a single individual placed in a semi-flexed position in a deep pit. The human remains were in a poor state of preservation. No known individual was identified. No associated funerary objects are present.

In April 1978, human remains representing a minimum of one individual were removed from the Harrington III Site, in Saugatuck Township, Allegan County, MI. The burial was excavated by Dr. Richard Flanders, an archeologist formerly at Grand Valley State University, Allendale, MI. This individual was placed in a shallow pit in a semi-flexed position. After recovery, the Harrington III burial was sent to Western Michigan University for curation and further study by Dr. Robert Sundick. The human remains represent a male, between 45 and 60 years of age. No known individual was identified. The two associated funerary objects are turtle shells.

Based on skeletal and dental morphology, as well as cultural materials associated with the Harrington II Site (including two ceramic pots that are not part of the museum collection), the site dates to circa A.D. 1000, during the Late Woodland period.

In 1968, human remains representing a minimum of 36 individuals were removed from the Brainerd Ossuary, in Valley Township, Allegan County, MI, during an excavation by Dr. Elizabeth B. Garland through the university's archeological field school. The burials were encountered in a large ossuary pit that measured 11 x 15 feet and extended 5 feet below the ground surface. The skeletal remains were heavily disturbed due to plowing and the effects of previous intrusive pits, which were likely dug by amateurs. After recovery, the remains were transferred to Western Michigan University for further study and curation. No known individuals were identified. The two associated funerary objects are pieces of chipped stone debitage.

The Brainerd Ossuary was dated to the late Middle Woodland period based on a radiocarbon date of A.D. 440 +/− 130 years.

Determinations Made by the Western Michigan University, Department of Anthropology

Officials of the Western Michigan University, Department of Anthropology, have determined that:

- Based on skeletal and dental morphology, and a radiocarbon date obtained from a charcoal sample that dates the Allegan Dam Site to the Upper Mississippian occupation of the Late Woodland period (13th century A.D), the human remains are Native American.
- Based on skeletal and dental morphology, as well as cultural materials associated with the Harrington II Site, the human remains and associated funerary objects are Native American.
- Based on the date of the Brainerd Ossuary, the human remains and associated funerary objects are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Multiple lines of evidence, including the Chicago Treaty of 1833 and oral tradition, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 38 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described above are

reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387–2753, before June 13, 2011. Disposition of the human remains and associated funerary objects to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, may proceed after that date if no additional requestors come forward.

The Western Michigan University, Anthropology Department, is responsible for notifying the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan, that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11850 Filed 5–12–11; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ, that meet the definitions of unassociated funerary objects, or sacred objects, or sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 95 unassociated funerary objects are 1 sack filled with bunts (wheat smut), 1 sack with a worked stick object, 2 wooden awls, 89 glass beads, 1 lot of blue pigment, and 1 stick pin. The five sacred objects are one clay figurine, one painted stone fetish, and three quartz crystals. The 36 objects that are both sacred and cultural patrimony are 4 eagle feathers, 1 stone purifying bowl, 3 medicine man's baskets, 1 medicine basket lid, 4 medicine man's basket fragments, 1 animal bone, 2 carved animal effigies, 1 carved human effigy, 1 feather, 1 wooden stick with feather, 1 wooden stick, 1 lot of animal hair, 1 bag of sand, 1 lump of earth, 2 animal tails, 1 bundle of sticks, 2 carved wooden symbols, 1 animal skin, 1 lot of botanical material, 2 reed wands, 3 gourd rattle fragments, and 1 worked plant stalk.

In April 1932, a metal stick pin was collected by an unknown individual from a grave reported to be that of a Papago medicine man. The grave was located near Santa Rosa, AZ. The object was donated to the Arizona State Museum on an unknown date by Dr. Byron Cummings. It is likely that the object was found on the ground surface adjacent to the grave and there is no indication that the burial was disturbed. No known individual was identified.

At an unknown date prior to August 1943, a sack filled with bunts (wheat smut), a sack containing a worked stick object, and two wooden awls were removed by an unknown individual from a grave probably located northwest of Santa Rosa on the Tohono O'odham Indian Reservation. The objects were probably located on the ground surface and there is no indication that the burial was disturbed. No known individual was identified. The objects were apparently donated to the Arizona State Museum in 1943.

In 1954, Mr. Joel Shiner collected 89 glass beads and 1 lot of blue pigment from a possible burial cave located on a hill northwest of Tumamoc Hill near Tucson, AZ. The beads and the pigment were donated to the Arizona State Museum in 1955. There is no indication that human remains were found at the time that the objects were collected, but there are reports that the O'odham people conducted burials using similar objects at this location during historic times. It is therefore likely that these objects had been placed with human remains. No remains were identified.

These 95 unassociated funerary objects were apparently obtained from the ground surface on or near historic graves. Based on the locations where they were found, they are clearly determined to be affiliated with the O'odham people.

In 1954, Mr. and Mrs. Hugh Sloan collected a clay human figurine from the base of a wall near Martinez Hill on the San Xavier Indian Reservation of the Tohono O'odham Nation. They subsequently donated the object to the Arizona State Museum.

On an unknown date between 1941 and 1951, Mr. John O'Mara and Mr. Norbert O'Mara collected a painted stone fetish, possibly from the Tohono O'odham Indian Reservation. The object was donated to the Arizona State Museum in March 1961.

In 1982, three quartz crystals were found in the remains of a historic house in the village of Nolic on the Tohono O'odham Indian Reservation during excavations conducted by the Institute for American Research. The crystals were part of a cache belonging to an elderly O'odham woman who lived in the house from approximately 1905 to 1930. The crystals were brought to the Arizona State Museum along with other collections from the same location under a repository agreement.

During consultations with the Cultural Committee of the Tohono O'odham Nation, it was determined that the clay human figurine, the painted stone fetish, and the quartz crystals are ceremonial objects which are needed by Tohono O'odham religious practitioners for traditional practices and therefore, may be classified as sacred objects.

In 1938, Mr. and Mrs. Wetmore Hodges purchased four eagle feathers from a medicine man's wand. The feathers had been used in healing rituals. The feathers had been owned by a medicine man at Big Fields on the Tohono O'odham Indian Reservation. The medicine man gave the feathers to his grandson, who later sold them to the Hodges. The Arizona State Museum purchased the feathers from the Hodges in 1939.

In 1939, Mr. and Mrs. Wetmore Hodges purchased a stone purifying bowl from the brother of a medicine man at Little Tucson on the Tohono O'odham Indian Reservation. Bowls of this type are used in rituals related to childbirth. The Arizona State Museum purchased the bowl from the Hodges in 1939.

In 1939, Mrs. Gwenyth Harrington purchased a medicine basket and some of its contents from Benito Segundo, a

medicine man of the Topowa Village on the Tohono O'odham Indian Reservation. The basket and the objects had been used for about 65 years in healing practices. Mr. Segundo retained other objects which had been stored in the basket, but agreed to sell the basket and the 17 objects described below with the understanding that he could buy them back in case he ever needed them again. Mrs. Harrington subsequently sold the basket and contents to Mr. and Mrs. Wetmore Hodges, who donated them to the Arizona State Museum in September 1939. The objects consist of 1 animal bone, 2 carved animal effigies, 1 carved human effigy, 1 feather, 1 wooden stick with feather, 1 wooden stick, 1 lot of animal hair, 1 bag of sand, 1 lump of earth, 2 animal tails, 1 bundle of sticks, 2 carved wooden symbols, 1 animal skin, and 1 lot of botanical material.

Curators and other staff of the Arizona State Museum participated in consultations with the Cultural Committee of the Tohono O'odham Nation regarding the four eagle feathers, the stone purifying bowl, the medicine basket and its contents. As a result of these consultations, it was determined that these objects are ceremonial objects that are needed by Tohono O'odham religious practitioners for traditional practices. It was furthermore determined that these 23 objects should be considered the property of the Tohono O'odham Nation as a whole and should not have been sold by individuals. There is specialized knowledge about these objects, which is not shared by everyone, and consequently those who sold the objects may not have been aware that these items could not be alienated or conveyed by any individual. Therefore, these objects have ongoing historical, traditional, and cultural importance to the Tohono O'odham Nation as a whole and should be considered to be objects that are both cultural patrimony and sacred.

In 1915, a medicine man's basket containing two reed wands wound with cotton yarn was found in the collections of the Arizona State Museum. The source from which the items were obtained and the date of the accession are unknown.

In April 1942, Ms. Jane Chesky obtained a medicine man's basket in four fragments, three gourd rattle fragments and one piece of a worked plant stalk from an unspecified location in the Sierra Blanca Mountains on the Tohono O'odham Indian Reservation. The rattle and stalk fragments were found in the medicine basket. Ms. Chesky subsequently donated the objects to the Arizona State Museum.

In April 1932, Mr. L.R. Caywood collected a medicine basket and medicine basket lid from a hill north of a shrine in Santa Rosa on the Tohono O'odham Indian Reservation. The basket was apparently lying on a talus slope below a shallow cave on the hill. On an unknown date prior to March 1949, the basket and its lid were donated to the Arizona State Museum and catalogued separately.

These three baskets are clearly of the same form as the medicine man's basket that was purchased by Mrs. Harrington in 1939. Consultations with the Cultural Committee of the Tohono O'odham Nation determined that these objects are ceremonial objects which are needed by Tohono O'odham religious practitioners for traditional practices. Furthermore, it was determined that these objects have ongoing cultural, traditional, and historical importance to the Tohono O'odham Nation as a whole and, therefore, must be considered to be objects of cultural patrimony.

Officials of the Arizona State Museum, University of Arizona, have determined, pursuant to 25 U.S.C. 3001(3)(B), that the 95 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Arizona State Museum, University of Arizona, also have determined, pursuant to 25 U.S.C. 3001(3)(C), that the five cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. In addition, officials of the Arizona State Museum, University of Arizona, have determined, pursuant to 25 U.S.C. 3001(3)(C) and (3)(D), the 36 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents and have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Arizona State Museum, University of Arizona, also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects, sacred objects, and sacred objects/objects of cultural patrimony and the Tohono O'odham Nation of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects, sacred objects, and/or sacred objects/objects of cultural patrimony should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950, before June 13, 2011. Repatriation of the unassociated funerary objects, sacred objects, and sacred objects/objects of cultural patrimony to the Tohono O'odham Nation of Arizona may proceed after that date if no additional claimants come forward.

The Arizona State Museum, University of Arizona, is responsible for notifying the Tohono O'odham Nation of Arizona that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11866 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Unilever N.V., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *Unilever N.V., Unilever PLC,* Conopco, Inc. and Alberto-Culver Co., Civil Action No. 1:11-cv-00858–ABJ. On May 6, 2011, the United States filed a Complaint alleging that the proposed acquisition by Unilever of Alberto-Culver Co. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Proposed Final Judgment, filed at the same time as the Complaint, requires Unilever and Alberto-Culver to divest the Alberto VO5 and Rave brands and related assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202-514–2481), on the Department of Justice's Web site at *http://*

www.usdoj.gov/atr, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0827).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, United States Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Plaintiff, v. *UNILEVER N.V., Weena 455, PO Box 760, 3000 DK Rotterdam, The Netherlands, UNILEVER PLC, Unilever House, 100 Victoria Embankment, London EC4Y 0DY United Kingdom, CONOPCO, INC., 800 Sylvan Avenue, Englewood Cliffs, New Jersey 07632,* and *ALBERTO–CULVER CO., 2525 Armitage Avenue, Melrose Park, Illinois 60160,* Defendants.

CASE NO.: 1:11-cv-00858
JUDGE: Jackson, Amy Berman
DATE FILED: 5/6/2011
DESCRIPTION: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Alberto-Culver Co. ("Alberto Culver") by Unilever N.V., Unilever PLC, and Conopco, Inc. (collectively, "Unilever") and to obtain other equitable relief. The acquisition would likely substantially lessen competition in the United States in markets for value shampoo, value conditioner, and hairspray sold in retail stores in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and result in higher prices for consumers in these markets. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Unilever and Alberto Culver are both large consumer products companies that sell shampoo, conditioner, hairspray, and many other products. On September 27, 2010, Unilever agreed to acquire Alberto Culver for approximately $3.7 billion.

2. Value shampoo and value conditioner (collectively, "value shampoo and conditioner") are the lowest priced shampoos and conditioners sold in stores and almost always sell for less than $2.00 per bottle. Unilever sells value shampoo and conditioner under the Suave Naturals brand; Alberto Culver sells value shampoo and conditioner under the Alberto VO5 brand.

3. The proposed acquisition would eliminate substantial head-to-head competition between Unilever's Suave Naturals and Alberto Culver's Alberto VO5 brands and give Unilever a near monopoly of the sale of value shampoo and conditioner in the United States with shares of approximately 90 percent in these two markets.

4. The proposed acquisition would also eliminate substantial head-to-head competition between Unilever and Alberto Culver in the United States for hairspray sold in retail stores. Unilever sells hairspray mainly under the Suave, Suave Professional, Rave, and Dove brands. Alberto Culver sells hairspray primarily under the TRESemmé, Nexxus, and Alberto VO5 brands. The proposed acquisition would make Unilever the largest seller of hairspray in the United States by increasing its market share from approximately 24 percent to over 45 percent.

5. Because the acquisition likely substantially lessens competition in the United States for the sale of value shampoo, value conditioner, and hairspray sold in retail stores, it violates Section 7 of the Clayton Act.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

6. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

7. Defendants Unilever and Alberto Culver manufacture, market, and sell consumer products, including shampoo, conditioner, and hairspray, in the flow of interstate commerce, and their production and sale of these products substantially affect interstate commerce. Defendants Unilever and Alberto Culver transact business and are found in the District of Columbia, through, among other things, selling consumer products to customers in this District. Venue is proper for Alberto Culver and Conopco, Inc. in this District under 15 U.S.C. § 22. Venue is proper in the District of Columbia for Unilever N.V., a Dutch corporation, and Unilever PLC, an English corporation, under 28 U.S.C. § 1391(d).

8. Defendants have consented to personal jurisdiction and venue in this judicial district.

III. THE DEFENDANTS

9. Unilever N.V. and Unilever PLC are corporations respectively organized under the laws of the Netherlands and England, with headquarters in Rotterdam and London. They wholly own Conopco, Inc., a New York corporation and U.S. subsidiary of Unilever N.V. and Unilever PLC. In addition to hair care products, Unilever owns more than 400 brands of consumer products such as Hellmann's, Lipton, Surf, Dove, Suave, and Vaseline. Unilever had $62 billion in sales in 2010.

10. Unilever's Suave Naturals brand is the most popular U.S. brand of value shampoo and conditioner, accounting for approximately 50 percent of value shampoo and conditioner sales. Unilever's hairspray brands (primarily Suave, Suave Professionals, Rave, and Dove) account for approximately 24 percent of U.S. hairspray sales.

11. Alberto Culver, a Delaware corporation headquartered in Melrose Park, Illinois, is a consumer products company that owns brands such as TRESemmé, Alberto VO5, Noxzema, Nexxus, St. Ives., Static Guard, and Mrs. Dash. Alberto Culver had $1.6 billion in sales for the fiscal year ending September 30, 2010.

12. Alberto Culver's Alberto VO5 brand is the second most popular U.S. brand of value shampoo and conditioner, accounting for approximately 39 percent of value shampoo and conditioner sales. Alberto Culver's hairspray brands (primarily TRESemmé, Nexxus, and Alberto VO5) account for approximately 22 percent of U.S. hairspray sales.

IV. RELEVANT MARKETS

A. Relevant Product Markets

1) Value Shampoo and Conditioner

13. Shampoo is a hair care product used to clean hair. Conditioner is a hair care product used to moisturize and enhance the appearance of hair.

14. Value shampoos and conditioners are the lowest priced shampoos and conditioners sold in retail stores, with current retail prices of approximately $1 per bottle for smaller sizes (e.g., 15–18 oz.) and almost always less than $1.65 per bottle for larger family sizes (e.g., 22.5–30 oz.). The parties' business documents and the hair care industry

consistently refer to products in this price range as belonging to a "value," "opening-price-point," or "dollar" category. Industry participants, including manufacturers and retailers, widely recognize that shampoo and conditioner products within the value category compete more closely with each other than they do with higher priced shampoos or conditioners.

15. Several factors considered together, including product ingredients, attributes, industry recognition, and price, indicate that value shampoo and conditioner are not reasonably interchangeable with more expensive shampoo and conditioner.

16. Value shampoo and conditioner generally contain only inexpensive ingredients, such as basic soap and scent. More expensive shampoos and conditioners contain additional, more expensive ingredients, which are intended to provide specialized benefits not provided by value shampoo and conditioner such as smoothing, strengthening, repairing, adding volume, and benefits for different hair types (e.g., curly, fine, frizzy, or color-treated hair).

17. Reflecting this difference in input costs and perceived consumer benefits, a significant price gap exists between value shampoo and conditioner and the next-lowest-priced shampoos and conditioners. For 15–18 oz. bottles, the price differential is generally 100 percent or more; value shampoo and conditioner are priced around $1 and the next-lowest-priced shampoos and conditioners are priced between $2.15 and $2.80. For larger bottles, the price differential is also significant. For example, one large retailer's average price for a 30 oz. value brand bottle of shampoo is $1.67 while the next-lowest-priced shampoo of that same size is, on average, $2.98.

18. Total annual U.S. retail sales of value shampoo are approximately $177 million. Total annual U.S. retail sales of value conditioner are approximately $106 million.

19. Consumers purchase value shampoo and conditioner almost exclusively through retail food, drug, dollar, and mass merchandise stores (collectively, "retail stores"). Sales of value shampoo and conditioner through hairdressing salons are de minimis.

20. Purchasers of value shampoo and conditioner are unlikely to reduce their purchases of value shampoo and conditioner in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable.

21. Value shampoo and value conditioner are each a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

2) Hairspray Sold in Retail Stores

22. Hairspray is a product used to set or maintain a hair style after the hair has been dried and styled.

23. Mousses, gels, and other styling aids are not reasonably interchangeable with hairspray because consumers typically use those products in wet or damp hair to give hair form, shape, and style, not to set or maintain a hair style after the hair has been dried and styled.

24. The vast majority of consumers purchase hairspray in retail stores. Some consumers purchase hairspray through hairdressing salons. Several factors considered together indicate that hairspray sold in salons is not reasonably interchangeable with hairspray sold in retail stores, including (i) purchasing hairspray in salons is less convenient for many consumers who purchase hairspray in retail stores, (ii) many more brands are available in retail stores than are available in salons, (iii) the hair care industry views sales of hairspray in retail stores as separate from sales in salons and uses different marketing strategies in those different sales channels, and (iv) the average price of hairspray sold in salons is at least three times more than the average price of hairspray sold in retail stores.

25. Total annual U.S. retail sales of hairspray sold in retail stores are approximately $809 million.

26. Purchasers of hairspray sold in retail stores are unlikely to reduce their purchases of hairspray sold in retail stores in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable.

27. Hairspray sold in retail stores is a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Markets

28. The relevant geographic markets, within the meaning of Section 7 of the Clayton Act, for the value shampoo, value conditioner, and hairspray product markets are no larger than the United States. Because of transportation costs, differences in brand presence and recognition, and U.S. regulations, a small but significant non-transitory price increase in each of these relevant product markets would not cause purchasers to switch to products sold outside of the United States to an extent that would make such a price increase unprofitable.

V. LIKELY ANTICOMPETITIVE EFFECTS

A. Value Shampoo and Conditioner

29. The markets for value shampoo and conditioner are highly concentrated. By unit volume, Unilever's share in each market is approximately 50 percent, and Alberto Culver's share is approximately 39 percent in each market. One other company accounts for almost all of the remaining sales in each market (approximately 10 percent).

30. If the proposed acquisition is consummated, the value shampoo and conditioner markets would become substantially more concentrated. The combined firm would control approximately 90 percent of the sales of value shampoo and conditioner.

31. Using a standard concentration measure called the Herfindahl-Herschman Index (or "HHI," defined and explained in Appendix A), the proposed acquisition would produce an HHI increase of approximately 3913 and a post-acquisition HHI of approximately 8602 for value shampoo, and an HHI increase of approximately 3902 and a post-acquisition HHI of approximately 8066 for value conditioner.

32. The proposed acquisition would reduce the number of significant competitors from three to two in the value shampoo and conditioner markets and would eliminate significant head-to-head competition between Unilever and Alberto Culver. Currently, Unilever and Alberto Culver compete in the United States on price, and through product innovation and various forms of promotions.

33. The significant increase in market concentration that the proposed acquisition would produce in the United States, combined with the loss of head-to-head competition, is likely to substantially lessen competition in violation of Section 7 of the Clayton Act, resulting in higher prices for consumers of value shampoo and conditioner.

B. Hairspray Sold in Retail Stores

34. The market for hairspray sold through retail stores in the United States is moderately concentrated. By unit volume, Unilever's market share is approximately 24 percent, and Alberto Culver's is approximately 22 percent. The three next largest competitors have shares of approximately 20 percent, nine percent, and eight percent.

35. If the proposed acquisition is consummated, the hairspray market would become substantially more concentrated, resulting in a highly concentrated market. The combined

firm would control approximately 46 percent of hairspray sold through retail stores. Post-merger, Unilever and the company with the next largest share would account for approximately 66 percent of the market.

36. The proposed acquisition would produce an HHI increase of approximately 1034 and a post-acquisition HHI of approximately 2654 for hairspray.

37. The proposed transaction would combine the two largest hairspray companies and would eliminate significant head-to-head competition between Unilever and Alberto Culver. Currently, Unilever and Alberto Culver compete in the United States on price and through product innovation, couponing and other promotions.

38. The significant increase in market concentration that the proposed acquisition would produce, combined with the loss of head-to-head competition, is likely to substantially lessen competition in violation of Section 7 of the Clayton Act, resulting in higher prices for consumers of hairspray sold through retail stores.

VI. ABSENCE OF COUNTERVAILING FACTORS

A. Entry

39. Responses from competitors and new entry likely will not prevent the proposed acquisition's likely anticompetitive effects. Barriers to entering these markets include: (i) the substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's product in retail outlets; and (iii) the difficulty of securing shelf-space in retail outlets.

40. Because of these entry barriers even sophisticated well-funded entrants have not been able to enter the value shampoo and conditioner markets. For example, one major U.S. manufacturer repositioned an existing brand into the value shampoo and conditioner markets in 2003, but discontinued it in 2004 because of low sales. Similarly, a major U.S. retailer introduced a private label value shampoo and conditioner in 2009, but also discontinued the product because of low sales.

41. Entry has been similarly difficult for hairspray sold in retail stores. In the last two years, no hairspray company has increased its unit sales by three percentage points or more.

B. Efficiencies

42. The proposed acquisition will not generate verifiable, merger-specific efficiencies sufficient to reverse the likely competitive harm of the acquisition.

VII. VIOLATION ALLEGED

43. The United States hereby incorporates paragraphs 1 through 42.

44. Unilever's proposed acquisition of Alberto Culver would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

a) actual and potential competition in the United States between Alberto Culver and Unilever for sales of value shampoo, value conditioner, and hairspray sold in retail stores would be eliminated;

b) competition generally in the United States for value shampoo, value conditioner, and hairspray sold in retail stores would be substantially lessened.

VIII. REQUEST FOR RELIEF

The United States requests:

a) That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed acquisition or from entering into or carrying out any other agreement, understanding, or plan by which Alberto Culver would be acquired by, acquire, or merge with Unilever;

c) That the Court award the United States the costs of this action; and

d) That the Court award such other relief to the United States as the Court may deem just and proper.

Dated: May 6, 2011

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

/s/ Christine A. Varney
Christine A. Varney,
Assistant Attorney General (DC Bar No. 411654).

/s/ Joseph F. Wayland
Joseph F. Wayland,
Deputy Assistant Attorney General.

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APPENDIX A

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. See U.S. Department of Justice & FTC, Horizontal Merger Guidelines § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission. See id.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *UNILEVER N.V., UNILEVER PLC, CONOPCO, INC., and ALBERTO-CULVER COMPANY,* Defendants.

CASE NO.: 1:11-cv-00858
JUDGE: Jackson, Amy Berman
DATE FILED: 5/6/2011
DESCRIPTION: Antitrust

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment

submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

The United States filed a civil antitrust Complaint on May 6, 2011, seeking to enjoin the proposed acquisition of Alberto-Culver Company ("Alberto Culver") by Unilever N.V., Unilever PLC, and Conopco, Inc. (collectively "Unilever"), alleging that it likely would substantially lessen competition in three product markets—value shampoo, value conditioner, and hairspray sold in retail stores—in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The loss of competition from the acquisition likely would result in higher prices for value shampoo, value conditioner, and hairspray sold in retail stores in the United States.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would result from Unilever's acquisition of Alberto Culver. Under the proposed Final Judgment, which is explained more fully below, Unilever is required to divest the Alberto VO5 and Rave brands and related assets to one or more acquirers approved by the United States. Pursuant to the Hold Separate, Unilever and Alberto Culver must take certain steps to ensure that the assets being divested continue to be operated in a competitively and economically viable manner and that competition for the products being divested is maintained during the pendency of the divestiture.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Acquisition

On September 27, 2010, Unilever N.V., Unilever PLC, and Conopco, Inc. agreed to acquire Alberto Culver for approximately $3.7 billion. Unilever N.V. and Unilever PLC are corporations respectively organized under the laws of the Netherlands and England, with headquarters in Rotterdam and London. They wholly own Conopco, Inc., a New York corporation and U.S. subsidiary of Unilever N.V. and Unilever PLC. Unilever sells consumer products in more than 100 countries under brands such as Hellmann's, Lipton, Surf, Dove, Suave, and Vaseline. Unilever has approximately 163,000 employees and had sales of $62 billion in 2010.

Alberto Culver, a Delaware corporation headquartered in Melrose Park, Illinois, sells consumer products in more than 100 countries under brands such as TRESemmé, Alberto VO5, Noxzema, Nexxus, St. Ives, Static Guard, and Mrs. Dash. Alberto Culver has approximately 2,500 employees and had sales of $1.6 billion for the fiscal year ending September 30, 2010.

Unilever's Suave Naturals brand is the most popular U.S. brand of value shampoo and conditioner, accounting for approximately 50 percent of value shampoo and conditioner sales. Unilever's hairspray brands (primarily Suave, Suave Professionals, Rave, and Dove) account for approximately 24 percent of hairspray sold in retail stores in the United States.

Alberto Culver's Alberto VO5 brand is the second most popular U.S. brand of value shampoo and conditioner, accounting for approximately 39 percent of value shampoo and conditioner sales. Alberto Culver's hairspray brands (primarily TRESemmé, Nexxus, and Alberto VO5) account for approximately 22 percent of hairspray sold in retail stores in the United States.

B. The Relevant Markets

1. Value Shampoo and Value Conditioner Are Relevant Product Markets

Shampoo is a hair care product used to clean hair. Conditioner is a hair care product used to moisturize and enhance the appearance of hair.

Value shampoos and conditioners are the lowest priced shampoos and conditioners sold in retail stores, with current retail prices of approximately $1 per bottle for smaller sizes (e.g., 15–18 oz.) and almost always less than $1.65 per bottle for larger family sizes (e.g., 22.5–30 oz.). The parties' business documents and the hair care industry consistently refer to products in this price range as belonging to a "value," "opening-price-point," or "dollar" category. Industry participants, including manufacturers and retailers, widely recognize that shampoo and conditioner products within the value category compete substantially more closely with each other than they do with higher priced shampoos or conditioners. Total annual U.S. retail sales of value shampoo are approximately $177 million. Total annual U.S. retail sales of value conditioner are approximately $106 million.

Several factors considered together, including product ingredients, attributes, industry recognition, and price, indicate that value shampoo and conditioner are not reasonably interchangeable with more expensive shampoo and conditioner. Value shampoo and conditioner generally contain only inexpensive ingredients, such as basic soap and scent. More expensive shampoos and conditioners contain additional, more expensive ingredients, which are intended to provide specialized benefits not provided by value shampoo and conditioner such as smoothing, strengthening, repairing, adding volume, and benefits for different hair types (e.g., curly, fine, frizzy, or color-treated hair).

Reflecting this difference in input costs and perceived consumer benefits, a significant price gap exists between value shampoo and conditioner and the next-lowest-priced shampoos and conditioners. For 15–18 oz. bottles, the price differential is generally 100 percent or more; value shampoo and conditioner are priced around $1 and the next-lowest-priced shampoos and conditioners are priced between $2.15 and $2.80. For larger bottles, the price differential is also significant. For example, one large retailer's average price for a 30 oz. value brand bottle of shampoo is $1.67 while the next-lowest-priced shampoo of that same size is, on average, $2.98.

Consumers purchase value shampoo and conditioner almost exclusively through retail food, drug, dollar, and mass merchandise stores (collectively, "retail stores"). Sales of value shampoo and conditioner through salons is de minimis. Purchasers of value shampoo and conditioner are unlikely to reduce their purchases of value shampoo and conditioner in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable. Value shampoo and value conditioner are, therefore, each a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

2. Hairspray Sold In Retail Stores Is a Relevant Product Market

Hairspray is a product used to set or maintain a hair style after the hair has been dried and styled. Mousses, gels, and other styling aids are not reasonably interchangeable with hairspray because consumers typically use those products

in wet or damp hair to give hair form, shape, and style, not to set or maintain a hair style after the hair has been dried and styled. Total annual U.S. retail sales of hairspray sold in retail stores are approximately $809 million.

The vast majority of consumers purchase hairspray in retail stores. Some consumers purchase hairspray through hairdressing salons. Several factors considered together indicate that hairspray sold in salons is not reasonably interchangeable with hairspray sold in retail stores, including (i) purchasing hairspray in salons is less convenient for many consumers who purchase hairspray in retail stores, (ii) many more brands are available in retail stores than are available in salons, (iii) the hair care industry views sales of hairspray in retail stores as separate from sales in salons and uses different marketing strategies in those different sales channels, and (iv) the average price of hairspray sold in salons is at least three times more than the average price of hairspray sold in retail stores.

Purchasers of hairspray sold in retail stores are unlikely to reduce their purchases of hairspray sold in retail stores in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable. Hairspray sold in retail stores is, therefore, a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

3. The Geographic Markets Are the United States

The Complaint alleges that the United States constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act for each of the three product markets. Defendants sell value shampoo, value conditioner, and hairspray through retail stores throughout the United States. For several reasons, a small but significant non-transitory price increase in each of these relevant product markets would not cause purchasers to switch to products sold outside of the United States to an extent that would make such a price increase unprofitable. First, brands preferred in the United States differ from brands preferred in foreign countries. Second, shipping relevant products from foreign countries to the United States would increase transportation costs to manufacturers and retailers. Finally, products sold outside the United States may not comply with U.S. regulations or have labeling suitable for the United States such that the product could be sold to consumers in the United States.

C. The Acquisition's Likely Anticompetitive Effects

1. Value Shampoo and Value Conditioner

The complaint alleges that the proposed acquisition would substantially lessen competition in the sale of value shampoo and conditioner in the United States, resulting in higher prices for consumers in these markets. Currently, Unilever and Alberto Culver compete in these markets on price and through product innovation and various forms of promotions. The combination would eliminate that significant head-to-head competition and reduce the number of significant competitors in the value shampoo and conditioner markets from three to two. In each market, Unilever's current share (by unit volume) is approximately 50 percent, and Alberto Culver's share is approximately 39 percent. One other competitor accounts for almost all of the remaining sales in each market (approximately 10 percent).

The markets for value shampoo and conditioner are already highly concentrated, and the acquisition would increase concentration significantly, resulting in Unilever controlling approximately 90 percent of both markets. Using a standard concentration measure called the Herfindahl-Herschman Index ("HHI"), the proposed acquisition would produce an HHI increase of approximately 3913 and a post-acquisition HHI of approximately 8602 for value shampoo, and an HHI increase of approximately 3902 and a post-acquisition HHI of approximately 8066 for value conditioner.

The acquisition would enable the combined firm to profit by unilaterally raising the prices of its products above the pre-merger price level. The parties' documents and diversion of sales caused by past price changes indicate that a significant fraction of customers purchasing Unilever's and Alberto Culver's value shampoos and conditioners view the other merging firm's value shampoo and conditioner as their next best choice. Consequently, a significant fraction of the sales lost due to price increases on Unilever's products would be diverted to products of Alberto Culver, and vice versa. See U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines § 6.1 (2010). The pre-merger margins on the parties' value shampoo and conditioner products are sufficiently high that the amount of recaptured lost sales would make the price increases profitable even though such price increases would not have been profitable prior to the merger. See id. Consequently, the proposed acquisition would likely cause the combined firm to raise the prices that it charges for value shampoo and conditioner.

2. Hairspray

The complaint alleges that the proposed acquisition would substantially lessen competition in the sale of hairspray sold in retail stores in the United States, resulting in higher prices for consumers in this market. Currently, Unilever and Alberto Culver compete in this market on price and through couponing, product innovation, and various forms of promotions. The combination would eliminate that significant head-to-head competition. Unilever's current share (by unit volume) of this market is approximately 24 percent, and Alberto Culver's is approximately 22 percent. The three next largest competitors have shares of approximately 20 percent, nine percent, and eight percent.

If the proposed acquisition is consummated, the market for hairspray sold in retail stores would become substantially more concentrated, resulting in a highly concentrated market. Using the HHI concentration measure, the proposed acquisition would produce an HHI increase of approximately 1034 and a post-acquisition HHI of approximately 2654 for hairspray sold in retail stores.

The acquisition would enable the combined firm to profit by unilaterally raising hairspray prices above the pre-merger price level. The parties' documents and diversion of sales caused by past price changes indicate that a significant fraction of customers purchasing Unilever's and Alberto Culver's brands of hairspray view the other merging firm's brands of hairspray as their next best choice. Consequently, a significant fraction of the sales lost due to price increases on Unilever's products would be diverted to products of Alberto Culver, and vice versa. See U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines § 6.1 (2010).

The significant fraction of customers that view Unilever's and Alberto Culver's hairspray brands as their next-best choice does not approach a majority. "However, unless pre-merger margins between price and incremental cost are low, that significant fraction need not approach a majority * * *. A merger may produce significant unilateral effects for a given product even though many more sales are diverted to products sold by non-merging firms than to products previously sold by the merger partner." Id. The pre-merger margins on the parties' hairspray products are

sufficiently high that the amount of recaptured lost sales would make the price increase profitable even though such price increases would not have been profitable prior to the merger.

3. Entry

The Complaint alleges that responses from competitors and new entry likely will not prevent the proposed acquisition's likely anticompetitive effects. Barriers to entering these markets include: (i) the substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's product in retail outlets; and (iii) the difficulty of securing shelf-space in retail outlets.

Because of these entry barriers even sophisticated, well-funded entrants have not been able to enter the value shampoo and conditioner markets. For example, one major U.S. manufacturer repositioned an existing brand into the value shampoo and conditioner markets in 2003, but discontinued it in 2004 because of low sales. Similarly, a major U.S. retailer introduced a private label value shampoo and conditioner in 2009, but also discontinued the product because of low sales.

Entry has been similarly difficult for hairspray sold in retail stores. In the last two years, no hairspray company has increased its unit sales by three percentage points or more.

Therefore, entry by new firms or the threat of entry by new firms would not defeat the substantial lessening of competition in the manufacture and sale of value shampoo, value conditioner, or hairspray in the United States that likely would result from Unilever's acquisition of Alberto Culver.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires significant divestitures that will preserve competition in the markets for value shampoo, value conditioner, and hairspray sold in retail stores. Within 90 calendar days after filing of the proposed Final Judgment or five calendar days after entry of a Final Judgment by the Court, whichever is later, the Defendants are required to divest the Alberto VO5 and Rave brands and associated assets to an acquirer or acquirers that has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the business of value shampoo, value conditioner, and/or hairspray products.

The Alberto VO5 brand consists of value shampoo, value conditioner, hairspray, and other hair styling products. The Rave brand consists of hairspray and mousse products. The divestiture of the Alberto VO5 brand and associated assets is limited to the United States because a U.S.-only divestiture of Alberto VO5 is sufficient to address the competitive harm that the acquisition would produce in the United States. Alberto Culver has substantial sales of Alberto VO5 products in other countries. Sales of Rave outside of the United States are de minimis. Accordingly, the proposed Final Judgment requires divestiture of the worldwide rights to Rave because it is the most efficient way to divest the brand.

The divestiture of Alberto VO5, which accounts for 39 percent of the value shampoo and conditioner markets, will preserve the pre-merger competition in the value shampoo and conditioner markets by maintaining Alberto VO5 as a competitor to Suave Naturals. In particular, the United States' analysis of the proposed merger indicated that the merged company was likely to raise prices on Suave Naturals and Alberto VO5 because lost sales on one would be diverted to the other. Divestiture of the Alberto VO5 brand eliminates the merged firm's ability to raise prices on Alberto VO5 and preserves a competitor to Suave Naturals.

The divestitures of Rave and Alberto VO5, which together account for 8 percent of hairspray sold in retail stores, will reduce the merged firm's post-merger market share from approximately 46 percent to approximately 38 percent. These divestitures are sufficient to prevent an increase in the merged firm's incentives and ability to raise hairspray prices because the divestitures will significantly increase the amount of sales that would be diverted to products of non-merging firms.

In particular, the United States' analysis of the proposed merger indicated that the merged company was especially likely to raise prices on Suave, Suave Professionals, and Rave hairspray products because lost sales would be diverted to former Alberto Culver products (e.g., TRESemmé and Alberto VO5 hairspray). Divestiture of the Rave brand eliminates the merged firm's ability to raise prices on Rave hairspray products. Additionally, the United States' analysis indicated that Rave is a close substitute to Suave and Suave Professionals. Because Rave is a close substitute to Suave and Suave Professionals, Rave's divestiture will create a competitor that will significantly decrease the merged firm's incentive to raise prices on Suave and Suave Professionals products.

In addition to divestiture of the Alberto VO5 and Rave brands, the proposed Final Judgment requires divestiture of other related intangible assets and certain related tangible assets. The other intangible assets include the rights to trade dress, trade secrets, and other intellectual property used in the research, development, production, marketing, servicing, distribution, or sale of the Alberto VO5 and Rave brands. The tangible assets include equipment used primarily to manufacture the divested brands, and records, contracts, permits, customer information, inventory, molds, packaging, artwork, and other assets related to the divested brands. The proposed Final Judgment does not require divestiture of any manufacturing plants or real property because many contract manufacturers have the available capacity, plants, and ability to manufacture the Alberto VO5 and Rave products. Requiring the Defendants to divest one or more manufacturing facilities is unnecessary where independent capacity is readily available or can be quickly built.

The proposed Final Judgment provides that, at the purchaser's option, the Defendants must divest any equipment primarily used by the parties to manufacture the Alberto VO5 and Rave products. Potential buyers of the divested assets may not want to purchase this equipment because they will use contract manufacturers to make the divested products or because they already own equipment that is capable of efficiently making the divested products. The equipment is also widely available from others. However, due primarily to lead times of up to nine months for ordering and receiving new equipment, establishing a new manufacturing line can take up to a year. The option to purchase this equipment may, therefore, allow some potential purchasers to be ready to produce the divested products sooner than if this equipment were not available.

Defendants must use their best efforts to divest the assets as expeditiously as possible. The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that an acquirer can and will use the assets as part of a viable, ongoing business engaged in the sale of value shampoo, value conditioner, and/or hairspray in retail stores in the United States.

If Defendants do not accomplish the ordered divestitures within the prescribed time period, then Section V of the proposed Final Judgment provides that the Court will appoint a trustee, selected by the United States, to complete the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestitures and the speed with which they are accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the required divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the Final Judgment, including extending the trust or the term of the trustee's appointment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States, Unilever, and Alberto Culver have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Joshua H. Soven
Chief, Litigation I Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 4100
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought a judicial order enjoining Unilever's acquisition of Alberto-Culver. The United States is satisfied, however, that divestiture of the assets described in the proposed Final Judgment will preserve competition for the sale of value shampoo, value conditioner, and hairspray in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States v. InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.").[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' "prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States,* 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 6, 2011

Respectfully submitted,

/s/Amy R. Fitzpatrick

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *UNILEVER N.V., UNILEVER PLC, CONOPCO, INC., and ALBERTO–CULVER CO.,* Defendants.

CASE NO.: 1:11–cv–00858
JUDGE: Jackson, Amy Berman
DATE FILED: 5/6/2011
DESCRIPTION: Antitrust

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on May 6, 2011, and the United States of America and defendants Unilever, N.V., Unilever PLC, Conopco, Inc., (collectively, "Unilever") and Alberto-Culver Company ("Alberto Culver") (collectively, "Defendants"), by their respective attorneys, have consented to the entry of this Final Judgment without

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[3] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298 at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

(A) "Acquirer" means the person, persons, entity or entities to whom Defendants divest all or some of the Divestiture Assets.

(B) "Alberto Culver" means Defendant Alberto-Culver Co., a Delaware corporation with its headquarters in Melrose Park, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) "Alberto VO5 Brand Name" means Alberto VO5 and any other name that uses, incorporates, or references the Alberto VO5 name in the United States, including but not limited to Alberto VO5 Extra Body Shampoo and Conditioner, Alberto VO5 Normal Shampoo and Conditioner, Alberto VO5 Repair and Protect Shampoo and Conditioner, Alberto VO5 2-in-1 Shampoo and Conditioner, Alberto VO5 Split Ends Shampoo and Conditioner, Alberto VO5 Moisture Milks Shampoo and Conditioner, Alberto VO5 Herbal Escapes Shampoo and Conditioner, Alberto VO5 Tea Therapy Shampoo and Conditioner, Alberto VO5 Silky Experiences Shampoo and Conditioner, Alberto VO5 Perfect Hold Aerosol Hairspray, Alberto VO5 Perfect Hold Non-Aerosol Hairspray, Alberto VO5 Perfect Hold Styling Mousse, Alberto VO5 Perfect Hold Styling Gel, Alberto VO5 Hair Spray Regular, Alberto VO5 Hair Spray Super, Alberto VO5 Hair Spray Brush Out, Alberto VO5 Hair Spray Extra Body, Alberto VO5 Hair Spray Unscented, Alberto VO5 Conditioning Hairdressing, Alberto VO5 Sheer Hairdressing Conditioning Cream, Alberto VO5 Hot Oil Shower Works Conditioning Treatment, Alberto VO5 Hot Oil Moisturizing Conditioning Treatment, Alberto VO5 Detangle and Shine Leave-in Conditioner, Alberto VO5 Total Hair Recovery Conditioning Treatment, and any extensions of any one or more of such products.

(D) "Alberto VO5 Business" means Alberto Culver's business engaged in the research, development, licensing (as licensor or as licensee), production, marketing, servicing or sale of any Alberto VO5 Product, including:

(i) All tangible assets used primarily in the research, development, marketing, or sale of any Alberto VO5 Product including but not limited to licenses, permits or authorizations issued by any governmental organization; contracts, teaming arrangements, agreements, leases commitments, certifications and understandings, including agreements with suppliers, distributors, wholesalers, retailers, marketers, or advertisers; customer lists; accounts, credit record, and related customer information; product inventory; packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records. Provided, however, that Unilever may retain the portions of such tangible assets that relate to products other than any Alberto VO5 Product where such asset reasonably can be divided;

(ii) At the option of the Acquirer, all tangible assets used primarily in the manufacturing of any Alberto VO5 Product, including manufacturing equipment, materials and supplies. Provided, however, that Defendants have no obligation to divest any real property as part of the Alberto VO5 Business;

(iii) All legal rights to the Alberto VO5 Brand Name for use in the United States;

(iv) All intellectual property used primarily in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product, including but not limited to all legal rights associated with the products, including patents, licenses, and sublicenses, copyrights, Licensed Marks, Trade Dress, and other intellectual property, for use in the United States; and a non-exclusive, transferable, royalty-free right to all other intellectual property used in the research, development, production, marketing, servicing distribution or sale of any Alberto VO5 Product for the purpose of the research, development, production, marketing, servicing, distribution or sale in the United States of any Alberto VO5 Product. Provided, however that with respect to any intellectual property divested pursuant to this subsection (iv) that Defendants have used in products not being divested, the Acquirer shall provide to Defendants a worldwide, non-exclusive, transferable, royalty-free right to use such intellectual property in the research, development, production, marketing, servicing, distribution or sale of any product not being divested; and

(v) All intangible assets, other than intangible assets set forth in subsection (iv) above, used in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product in the United States for use in the United States, including all trade secrets; all technical information, computer software and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, the products under the Alberto VO5 Brand Name; all research, packaging, sales marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Alberto Culver provides to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, that with respect to any intangible assets that, prior to the merger, were being used in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product and any product not being divested, Defendants may utilize and retain the portions of such

intangible assets that relate solely to products other than any Alberto VO5 Product where such assets reasonably can be divided, and may utilize and retain copies of such intangible assets that relate to both any Alberto VO5 Product and any other product not being divested.

(E) "Albert VO5 Product" means any product that Alberto Culver sold, sells, or has plans to sell under the Alberto VO5 Brand Name in the United States.

(F) "Defendants" mean Unilever and Alberto Culver.

(G) "Divestiture Assets" mean the Alberto VO5 Business and the Rave Business.

(H) "Formulas" mean all Defendants' formulas, processes, and specifications used by the Defendants in connection with the production and packaging associated with the goods manufactured, distributed, marketed, and sold under a brand name, including, without limitation, Defendants' ingredients, manufacturing processes, equipment and material specifications, trade and manufacturing secrets, know-how, and scientific and technical information.

(I) "Licensed Marks" mean all trademarks, service marks, or trade names belonging or licensed to Defendants (whether registered or unregistered, or whether the subject of a pending application) associated with the goods manufactured, distributed, marketed, and sold under a brand name.

(J) "Rave Brand Name" means Rave and any other name that uses, incorporates, or references the Rave name, including but not limited to Rave 4x Mega Scented Aerosol Hairspray, Rave 4x Mega Scented Non-Aerosol Hairspray, Rave 4x Mega Unscented Aerosol Hairspray, Rave 4x Mega Unscented Non-Aerosol Hairspray, Rave 2x Low Control Bodifying Mousse, Rave 2x Extra Bodifying Mousse, and any extensions of any one or more of such products.

(K) "Rave Business" means Unilever's business engaged in the research, development, licensing (as licensor or as licensee), production, marketing, servicing or sale of any Rave Product, including:

(i) All tangible assets used primarily in the research, development, marketing, or sale of any Rave Product including but not limited to licenses, permits or authorizations issued by any governmental organization; contracts, teaming arrangements, agreements, leases commitments, certifications and understandings, including agreements with suppliers, distributors, wholesalers, retailers, marketers, or advertisers; customer lists; accounts, credit record, and related customer information; product inventory; packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records. Provided, however, that Unilever may retain the portions of such tangible assets that relate to products other than any Rave Product where such asset reasonably can be divided;

(ii) At the option of the Acquirer, all tangible assets used primarily in the manufacturing of any Rave Product, including manufacturing equipment, materials and supplies. Provided, however, that Defendants have no obligation to divest any real property as part of the Rave Business;

(iii) All legal rights to the Rave Brand Name. Provided, however, that Defendants shall not be required to give the Acquirer rights to use the terms "Unilever" or "Suave," or any derivative of the terms "Unilever" or "Suave;"

(iv) All intellectual property used primarily in the research, development, production, marketing, servicing, distribution or sale of any Rave Product, including but not limited to all legal rights associated with the products, including patents, licenses, and sublicenses, copyrights, Licensed Marks, Trade Dress, and other intellectual property; and a non-exclusive, transferable, royalty-free right to all other intellectual property used in the research, development, production, marketing, servicing distribution or sale of any Rave Product for the purpose of the research, development, production, marketing, servicing, distribution or sale of any Rave Product. Provided, however that with respect to any intellectual property divested pursuant to this subsection (iv) that Defendants have used in products not being divested, the Acquirer shall provide to Defendants a worldwide, non-exclusive, transferable, royalty-free right to use such intellectual property in the research, development, production, marketing, servicing, distribution or sale of any product not being divested; and

(v) All intangible assets, other than intangible assets set forth in subsection (iv) above, used in the research, development, production, marketing, servicing, distribution or sale of any Rave Product, including all trade secrets; all technical information, computer software and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, the products under the Rave Brand Name; all research, packaging, sales marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Unilever provides to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, that with respect to any intangible assets that, prior to the merger, were being used in the research, development, production, marketing, servicing, distribution or sale of any Rave Product and any product not being divested, Defendants may utilize and retain the portions of such intangible assets that relate solely to products other than any Rave Product where such assets reasonably can be divided, and may utilize and retain copies of such intangible assets that relate to both any Rave Product and any other product not being divested.

(L) "Rave Product" means any product that Unilever sold, sells, or has plans to sell under the Rave Brand Name anywhere in the world.

(M) "Trade Dress" means the print, style, color, labels, and other elements of trade dress currently used by Defendants and/or their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures in association with the goods manufactured, distributed, marketed, and sold under a brand name.

(N) "Unilever" means defendants Unilever, N.V. and Unilever PLC, corporations respectively organized under the laws of the Netherlands and England, with headquarters in Rotterdam and London, and their successors and assigns, their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees. Unilever includes Conopco, Inc., a New York corporation, a wholly owned subsidiary of Unilever N.V. and Unilever PLC.

III. Applicability

(A) This Final Judgment applies to all Defendants, as defined above, and all other persons in active concert or participation with the Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

(B) If, prior to complying with Section IV or V of this Final Judgment, Defendants sell, license, or otherwise disposes of all or substantially all of their assets or of lesser business units that include the Divestiture Assets,

Defendants shall require the purchaser(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. Divestitures

(A) Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Proposed Final Judgment or five (5) calendar days after entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

(B) In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person who inquires about a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

(C) Defendants shall provide the Acquirer(s) and the United States with information relating to the personnel involved in the design, product development, management, operations, or sales activities relating to the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ or contract with any Defendants' employee whose primary responsibility relates to the Divestiture Assets. Interference with respect to this paragraph includes, but is not limited to, offering to increase an employee's salary or benefits other than as a part of a company-wide increase in salary or benefits. In addition, for each employee who elects employment by the Acquirer or Acquirers, Defendants shall vest all unvested pension and other equity rights of that employee and provide all benefits to which the employee would have been entitled if terminated without cause.

(D) Defendants shall waive all noncompete agreements for any current or former employee employed in the design, development, production, marketing, servicing, distribution, and/or sale of any of the Divestiture Assets who the Acquirer(s) employs with relation to the Divestiture Assets.

(E) Defendants shall permit prospective Acquirers of the Divestiture Assets to (1) have reasonable access to personnel; (2) make reasonable inspections of the physical facilities; (3) access to any and all environmental, zoning, and other permit documents and information; and (4) access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(F) Defendants shall warrant to the Acquirer(s) that the Divestiture Assets will be operational on the date of sale.

(G) Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

(H) In connection with the divestiture of the Divestiture Assets pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, at the option of the Acquirer(s), the Defendants shall enter into transitional supply and services agreements, up to six (6) months in length, for the supply of Alberto VO5 and/or Rave Products and the provision of services required to transfer the Alberto VO5 and/or Rave Businesses to the Acquirer(s). At the request of the Acquirer, the United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed twelve (12) months in total. The terms and conditions of such agreements must be acceptable to the United States in its sole discretion. Upon the expiration or termination of such agreements, the Defendants shall not enter into or have any supply or service agreements with the Acquirer(s) relating to the sale of the Alberto VO5 and/or Rave Products for a period of three (3) years thereafter.

(I) Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divestiture will achieve the purposes of this Final Judgment and that the Divestiture Assets can and will be used by the Acquirer(s) as part of viable, ongoing business engaged in the sale of shampoo, conditioner, and/or hairspray. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(i) shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of shampoo, conditioner and/or hairspray; and

(ii) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

(A) If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

(B) After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

(C) Defendants shall not object to a sale by the trustee on any ground other

than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

(D) The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(E) Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, and Defendants shall develop financial and other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(F) After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

(G) If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

(A) Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

(B) Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish to the United States any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

(A) Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by

the United States to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

(C) Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

X. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(i) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(ii) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, including, but not limited to, any transitional supply and/or services agreements entered into between the Acquirer(s) and the Defendants pursuant to Section IV(H) of this Final Judgment.

(C) No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants shall not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge

[FR Doc. 2011–11865 Filed 5–12–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; One-Stop Workforce Information Grant Plan and Annual Performance Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "One-Stop Workforce Information Grant Plan and Annual Performance Report," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: As a requirement for receiving Workforce Information core products and services reimbursable grants, States must submit the following on an annual basis: State certification of required grant deliverables, State economic analyses and/or special workforce information/economic studies or reports, and the annual performance report. This information, combined with the continued expectation of customer consultations, all serve to ensure that the Secretary meets Workforce Investment Act regulatory requirements.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0417. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 5, 2011 (76 FR 588).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0417. The OMB is particularly interested in comments that:

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

Agency: Employment and Training Administration (ETA).

Title of Collection: One-Stop Workforce Information Grant Plan and Annual Performance Report.

OMB Control Number: 1205–0417.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 162.

Total Estimated Annual Burden Hours: 31,228.

Total Estimated Annual Costs Burden: $0.

Dated: May 10, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11818 Filed 5–12–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Escape and Evacuation Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Escape and Evacuation Plans," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Regulations 30 CFR 57.11053 requires the development of an escape and evacuation plan specifically addressing the unique conditions of each underground metal and nonmetal mine and requires that revisions be made as mining progresses. The plan must be available to representatives of the MSHA and conspicuously posted at locations convenient to all persons on the surface and underground. The mine operator and the MSHA are required jointly to review the plan at least once every six months.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0046. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 17, 2011 (75 FR 79034).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1219–

0046. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Escape and Evacuation Plans.

OMB Control Number: 1219–0046.

Affected Public: Private Sector—Business or other for-profits.

Total Estimated Number of Respondents: 234.

Total Estimated Number of Responses: 936.

Total Estimated Annual Burden Hours: 3,978.

Total Estimated Annual Costs Burden: $2,340.

Dated: May 9, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11820 Filed 5–12–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Interstate Arrangement for Combining Employment and Wages

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Interstate Arrangement for Combining Employment and Wages," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This report provides data necessary to measure the scope and effect of the program for combining employment and wages covered under different States' laws of a single State and to monitor States payment and wage transfer performance.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0029. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 4, 2011 (76 FR 382).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0029. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Interstate Arrangement for Combining Employment and Wages.

OMB Control Number: 1205–0029.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Burden Hours: 848.

Total Estimated Annual Costs Burden: $0.

Dated: May 9, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11725 Filed 5–12–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Powered Platforms for Building Maintenance

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Powered Platforms for Building Maintenance," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by *e-mail* at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The OSHA has developed the Powered Platforms for Building Maintenance Standard to ensure workers who operate powered platforms receive uniform and comprehensive instruction and information in the operation, safe use, and inspection of this equipment. The Standard includes several information collection requirements: Emergency action plans; affixing load rating plates to suspended units; and building owners establishing and maintaining written certification of inspections and testing conducted on the supporting structures of buildings, powered platform systems, and suspension wire ropes.

Emergency action plans allow employers and workers to anticipate, and effectively respond to, emergencies that may arise during powered platform operations. Affixing load rating plates to suspended units, instructions to emergency electric operating devices, and tags to wire rope fasteners prevent workplace accidents by providing information to employers and workers regarding the conditions under which they can safely operate these system components. Requiring building owners to establish and maintain written certification of inspections and testing conducted on the supporting structures of buildings, powered platform systems, and suspension wire ropes provides employers and workers with assurance that they can operate safely from the buildings using equipment that is in safe operating condition.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0121. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 7, 2011 (76 FR 1192).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0121. The OMB is particularly interested in comments that:

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

Agency: DOL–OSHA.

Title of Collection: Powered Platforms for Building Maintenance.

OMB Control Number: 1218–0121.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 900.

Total Estimated Number of Responses: 182,848.

Total Estimated Annual Burden Hours: 135,656.

Total Estimated Annual Costs Burden: $0.

Dated: May 9, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11699 Filed 5–12–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Training Plan Regulations and Certificate of Training

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Training Plan Regulations and Certificate of Training," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk

Officer for the Department of Labor, Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The MSHA requires training plans to be submitted for approval to the MSHA District Manager for the area in which the mine is located. Plans must contain the company name, mine name, and MSHA identification number of the mine; the name and position of the person designated by the operator who is responsible for health and safety training at the mine; a list of MSHA-approved instructors with whom the operator proposes to make arrangements to teach the courses and the courses each instructor is qualified to teach; the location where training will be given for each course; a description of the teaching methods and the course materials which are to be used in training; the approximate number of miners employed at the mine and the maximum number who will attend each session of training; the predicted time or periods of time when regularly scheduled refresher training will be given including the titles of courses to be taught, the total number of instruction hours for each course, and the predicted time and length of each session of training; and for new task training, a complete list of task assignments, the titles of personnel conducting the training, the outline of training procedures used, and the evaluation procedures used to determine the effectiveness of the training.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0009. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 17, 2011 (75 FR 79030).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1219–0009. The OMB is particularly interested in comments that:

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

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Training Plan Regulations and Certificate of Training.

OMB Control Number: 1219–0009.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 2331.

Total Estimated Number of Responses: 108,367.

Total Estimated Annual Burden Hours: 15,069.

Total Estimated Annual Costs Burden: $269,541.

Dated: May 9, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11819 Filed 5–12–11; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings; Notice

DATE AND TIME: The Legal Services Corporation Board of Directors will meet telephonically on May 17, 2011. The meeting will begin at 11 a.m., Eastern Standard Time, and will continue until the conclusion of the Board's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street, NW., Washington DC 20007.

PUBLIC OBSERVATION: Unless otherwise noticed, all meetings of the LSC Board of Directors are open to public observation. Members of the public who are unable to attend but wish to listen to a public proceeding may do so by following the telephone call-in directions provided below and are asked to keep their telephones muted to eliminate background noises. From time to time, the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSION:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please "MUTE" your telephone immediately.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda
2. Consider and act on the Board of Directors' report in response to the Inspector General's Semiannual Report to Congress for the period of October 1, 2010 through March 31, 2011
3. Consider and act upon proposed modification of the Helaine Barnett Fellowship Program
4. Staff report on LSC response to recent natural disasters in Alabama and Mississippi
5. Public Comment
6. Consider and act on other business
7. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting

may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: May 10, 2011.

Victor M. Fortuno,

Vice President, General Counsel & Corporate Secretary.

[FR Doc. 2011–11884 Filed 5–11–11; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 13, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–584–11–2, 7 items 6 temporary items). Records relating to disaster response, including continuity of operations plans and directives, continuity of operations exercises, and files relating to agency responses to disasters. Proposed for permanent retention are files relating to major disasters.

2. Department of Agriculture, Grain Inspection, Packers, and Stockyard Administration (N1–545–08–1, 13 items, 12 temporary items). Records relating to organizations that provide official grain inspection and weighing services for the agency. Proposed for permanent retention are substantive reports such as annual summaries and comprehensive nonrecurring reports.

3. Department of the Army, Agency-wide (N1–AU–10–20, 1 item, 1 temporary item). Master files of an electronic information system used to coordinate community support, housing, medical, educational, and personnel services for Army family members with special needs. The files contain screenings, medical assessments, eligibility determinations, referrals, and evaluations.

4. Department of Education, Office of Management (N1–441–10–2, 11 items, 2 temporary items). Research and evaluation data that support analyses and studies relating to educational issues. Proposed for permanent retention are records documenting data collections, analyses, and studies of national impact or significant historical interest.

5. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–09–1, 5 items, 3 temporary items). Minor and secondary research records including datasets, field records, project support

and ancillary documents, and background information.

6. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–11–2, 2 items, 2 temporary items). Records of pilot projects to test and evaluate new electronic systems before they are put to use, including correspondence, reports, charts, and forms.

7. Department of Health and Human Services, Office of the Secretary (DAA–0468–2011–0001, 1 item, 1 temporary item). Employee copies of receipts and other documentation relating to travel expenses.

8. Department of Health and Human Services, Office of the Secretary (DAA–0468–2011–0003, 1 item, 1 temporary item). Records relating to employment applications and interviews of non-selected applicants.

9. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (N1–511–09–2, 3 items, 1 temporary item). Raw data files of the National Survey of Drug Use and Health. Proposed for permanent retention are public use data files and survey reports.

10. Department of Justice, Federal Bureau of Investigation (N1–65–10–5, 39 items, 39 temporary items). Records of an electronic information system used for requesting and completing background checks on individuals attempting to purchase a firearm. Includes a new tracking system for appealing denials and contacting gun dealers.

11. Department of Justice, Federal Bureau of Investigation (N1–65–11–05, 4 items, 4 temporary items). Master file, system documentation, and backups of an electronic information system used to report on compensation claims for on-the-job injuries of agency employees.

12. Department of Transportation, Maritime Administration (N1–357–11–1, 2 items, 2 temporary items). Headquarters' copies of state maritime schools files and service obligation contracts.

13. Department of Transportation, Maritime Administration (N1–357–11–2, 1 item, 1 temporary item). Service obligation contract files between the United States Merchant Marine Academy and its students.

14. Department of Transportation, National Highway Transportation Safety Administration (N1–416–09–2, 1 item, 1 temporary item). Master files of an electronic information system used to track and control motor vehicle importations.

15. Department of Transportation, National Highway Transportation Safety Administration (N1–416–09–4, 1 item, 1 temporary item). Master files of an electronic information system used to track and control agency correspondence.

16. Department of Transportation, National Highway Transportation Safety Administration (N1–416–11–1, 4 items, 4 temporary items). Inputs, outputs, and master files of an electronic information system used to track information on disconnected vehicle air bags.

17. Department of Transportation, Surface Transportation Board (N1–134–11–2, 1 item, 1 temporary item). Records of the Office of the Public Assistance's Governmental Affairs and Compliance division relating to fee waiver files.

18. Department of Veterans Affairs, Veterans Benefit Administration (N1–15–10–1, 1 item, 1 temporary item). Records relating to the ineligibility of veterans or their dependents in applying for benefits as a result of military service.

19. Federal Mine Safety and Health Review Commission, Office of the Executive Director (N1–470–09–1, 14 items, 10 temporary items). Meeting audio recordings, inter-agency agreement files, vendor files, central contracting log files, master files of an electronic information system used to track information resources, Web site management and operations files, Web site log files, and web content. Proposed for permanent retention are strategic plans, biographies of chairmen and commissioners, policies and procedure files, and annual reports.

20. National Archives and Records Administration, Space and Security Management Division (DAA–0064–2011–0001, 1 item, 1 temporary item). Records of the Holdings Protection Program, including training materials, holdings security procedures, vendor consultation, incident analysis, and outreach.

21. National Archives and Records Administration, Space and Security Management Division (DAA–0064–2011–0002, 10 items, 9 temporary items). Records of the Continuity and Emergency Planning division, including policy development, preparedness training, evaluation, and response and recovery files. Proposed for permanent retention are reports regarding incidents resulting in loss of life or significant damage.

22. Social Security Administration, Office of Publications and Logistics Management (N1–47–09–3, 1 item, 1 temporary item). Master files of an electronic information system containing employer reported earnings about individuals who have been issued a Social Security Number and who may have earnings under Social Security.

23. Social Security Administration, Office of Publications and Logistics Management (N1–47–09–4, 1 item, 1 temporary item). Master files of an electronic information system containing account, payment, and beneficiary information for those entitled to receive benefits.

Dated: May 5, 2011.

Sharon G. Thibodeau,

Deputy Assistant Archivist for Records Services.

[FR Doc. 2011–11776 Filed 5–12–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: Information Security Oversight Office, National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the following committee meeting to discuss National Industrial Security Program policy matters.

DATES: The meeting will be held on June 20, 2011 from 1 p.m. to 3 p.m.

ADDRESSES: Hilton Riverside Hotel, Two Poydras Street, Belle Chasse—Third Floor, New Orleans, LA 70130.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than June 13, 2011. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: David O. Best, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5123, or at *david.best@nara.gov;* Daniel J. Livingstone, Program Analyst, ISOO at (202) 357–5474 or *dan.livingstone@nara.gov;* Robert L. Tringali, Program Analyst, ISOO at (202) 357–5335 or *robert.tringali@nara.gov.* Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

Dated: May 10, 2011.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2011–11918 Filed 5–12–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Institute of Museum and Library Services, The National Foundation for the Arts and the Humanities.

ACTION: 30-Day notice of submission of information collection for approval by the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, IMLS has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted on or before June 10, 2011.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Carlos Manjarrez, Director for Planning, Research and Evaluation, Institute of Museum and Library Services, 1800 M St., NW., 9th Floor, Washington, DC 20036. Mr. Manjarrez can be reached by *Telephone:* 202–653–4671, *Fax:* 202–653–4600, or by e-mail at *cmanjarrez@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, IMLS means information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, content and accuracy of information, usefulness of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

FRA will only submit a collection of information for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both respondents and the Federal Government;
- The collections of information are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for purposes of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

On December 22, 2010, OMB—on behalf of IMLS and other listed Executive Agencies—published a 60-day notice in the **Federal Register** soliciting comments on ICRs for which the agency was seeking OMB approval. 75 FR 80542. IMLS received no comments in response to this notice.

The summary below describes the nature of the information collection requirements (ICRs) and the expected projected burden estimates over the next three years [1] for the ICR being submitted

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide: *Average Expected Annual Number of activities:* 25,000. *Average number of Respondents per Activity:* 200. *Annual responses:* 5,000,000. *Frequency of Response:* Once per request. *Average minutes per response:* 30. *Burden hours:* 2,500,000.

for clearance by OMB as required by the PRA.

Current Actions: New collection of information.

Type of Review: New Collection.

OMB Number: To Be Determined.

Agency Number: 3137.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 5.

Respondents: 4,900.

Annual responses: 4,900.

Frequency of Response: Once per request.

Average minutes per response: .55 minutes.

Burden hours: 3,900 hours.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Institute, including whether the information will have practical utility; the accuracy of the Institutes' estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. 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 Office of Management and Budget control number.

Dated: May 9, 2011.

Kim A. Miller,

Management Analyst, Office of Planning, Research and Evaluation.

[FR Doc. 2011–11701 Filed 5–12–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92–463), as amended, notice is hereby given that eleven meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Folk and Traditional Arts (application review): June 1–2, 2011 in Room 716. This meeting, from 9 a.m. to 6 p.m. on June 1st and from 9 a.m. to 5:30 p.m. on June 2nd, will be closed.

Local Arts Agencies (application review): June 7, 2011 in Room 730. This meeting, from 9 a.m. to 5:30 p.m., will be closed.

Media Arts (application review): June 7–8, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on June 7th and from 9 a.m. to 3:30 p.m. on June 8th, will be closed.

Media Arts (application review): June 9–10, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on June 9th and from 9 a.m. to 4 p.m. on June 10th, will be closed.

Theater (application review): June 7–10, 2011 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on June 7th, from 9 a.m. to 6 p.m. on June 8th and 9th, and from 9 a.m. to 3 p.m. on June 10th, will be closed.

Museums (application review): June 13–15, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on June 13th, from 9 a.m. to 6 p.m. on June 14th, and from 9 a.m. to 3:30 p.m. on June 15th, will be closed.

Presenting (application review): June 16–17, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on June 16th and from 9 a.m. to 1:30 p.m. on June 17th, will be closed.

Arts Education (application review): June 20–22, 2011 in Room 627. This meeting, from 9 a.m. to 6 p.m. on June 20th and 21st and from 9 a.m. to 3 p.m. on June 22nd, will be closed.

Music (application review): June 27–30, 2011 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on June 27th–29th and from 9 a.m. to 5 p.m. on June 30th, will be closed.

Artist Communities (application review): June 27–28, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on June 27th and from 9 a.m. to 4 p.m. on June 28th, will be closed.

Dance (application review): June 28–July 1, 2011 in Room 716. This meeting, from 9 a.m. to 6 p.m. each day, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 10, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–11775 Filed 5–12–11; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0180]

Notice of Availability of NUREG–1950: ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800''

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Issuance of NUREG–1950, ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800.''

SUMMARY: The NRC staff is issuing NUREG–1950, ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800.'' This document is a knowledge management transfer document associated with Revision 2 of NUREG–1801, "Generic Aging Lessons Learned (GALL) Report," and Revision 2 of NUREG–1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants."

The technical changes that were made when revising the guidance contained in NUREG–1801 are captured in this document, along with the supporting technical bases. Changes to NUREG–1800, many of which derive from the changes in NUREG–1801, are also discussed in this document. Consequently, this document provides an understanding of the underlying rationale used by the NRC to develop Revisions 2 of NUREG–1801 and NUREG–1800.

This document also contains the NRC staff's analysis of the public comments

received on the Draft Revisions 2 of both the GALL Report and the Standard Review Plan for License Renewal (SRP–LR), published for public comment in May 2010 (75 FR 27838), with the public comment period expiring on July 2, 2010. The disposition of the comments accepted by the NRC staff and used as basis for instituting a change to either the GALL Report or the SRP–LR are detailed in this document. In addition, the public comments that did not result in a change to either NUREG are also dispositioned, and a technical basis for the staff's handling of these comments is presented.

ADDRESSES: Electronic copies are available in the Commission's Public Document Room (PDR). The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are also available from the NRC's Agencywide Documents Access and Management System (ADAMS). Publicly available documents created or received at the NRC are available online in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The NUREG–1950, is under ADAMS Accession Number ML11116A062.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gramm, License Renewal Project Manager, Office of Nuclear Reactor Regulation, Mail Stop O–11F1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1010, or by e-mail *Robert.Gramm@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of May 2011.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–11829 Filed 5–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0383]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Regulatory Guide 1.177, Revision 1, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications."

FOR FURTHER INFORMATION CONTACT: Donald Helton, Probabilistic Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–251–7594 or e-mail *Donald.Helton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," was issued with a temporary identification as Draft Regulatory Guide, DG–1227. This regulatory guide describes methods acceptable to the NRC staff for assessing the nature and impact of proposed technical specifications (TS) changes by considering engineering issues and applying risk insights. Licensees submitting risk information (whether on their own initiative or at the request of the staff) should address each of the principles of risk-informed regulation discussed in this regulatory guide. Licensees should identify how chosen approaches and methods (whether they are quantitative or qualitative, traditional or probabilistic), data, and criteria for considering risk are appropriate for making the necessary decision.

This regulatory guide provides the staff's recommendations for using risk information to evaluate changes to nuclear power plant TS completion times and surveillance frequencies in order to assess the impact of such proposed changes on the risk associated with plant operation. The guidance provided here does not preclude other approaches for requesting TS changes. Rather, this regulatory guide is intended to improve consistency in regulatory decisions related to TS changes in which the results of risk analyses are used to help justify the change. As such, this regulatory guide, the use of which is voluntary, provides guidance concerning an approach that the NRC has determined to be acceptable for analyzing issues associated with proposed changes to a plant's TS and for assessing the impact of such proposed changes on the risk associated with plant design and operation. Additional or revised guidance might be provided for new reactors (*e.g.,* advanced light-water reactors) licensed under 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

Other types of TS changes that follow the principles outlined in this regulatory guide may be proposed and will be considered on their own merit.

II. Further Information

In August 2009, DG–1227 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on November 3, 2009. Electronic copies of Regulatory Guide 1.177, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resources@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 4th day of May, 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–11830 Filed 5–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0385]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.174,

Revision 2, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis."

FOR FURTHER INFORMATION CONTACT: Donald Helton, Probabilistic Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–251–7594 or e-mail *Donald.Helton@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.174, "An Approach For Using Probabilistic Risk Assessment In Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," was issued with a temporary identification as Draft Regulatory Guide, DG–1226. This regulatory guide describes an acceptable method for the licensee and NRC staff to use in assessing the nature and impact of licensing basis (LB) changes when the licensee chooses to support, or is requested by the staff to support, the changes with risk information. The NRC staff will review these LB changes by considering engineering issues and applying risk insights. Licensees that submit risk information (whether on their own initiative or at the request of the staff) should address each of the principles of risk-informed regulation discussed in this regulatory guide. Licensees should identify how their chosen approaches and methods (whether quantitative or qualitative, deterministic or probabilistic), data, and criteria for considering risk are appropriate for the decision to be made.

The guidance provided in this regulatory guide does not preclude other approaches for requesting changes to the LB. Rather, the staff intends for this regulatory guide to improve consistency in regulatory decisions in areas in which the results of risk analyses are used to help justify regulatory action. As such, the principles, process, and approach discussed herein also provide useful guidance for the application of risk information to a broader set of activities than plant-specific changes to a plant's LB (*i.e.,* generic activities), and licensees are encouraged to use this guidance in that regard.

The NRC issues regulatory guides to describe to the public methods that the staff considers acceptable for use in implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific problems or postulated accidents, and to provide guidance to applicants. Regulatory guides are not substitutes for regulations and compliance with them is not required.

II. Further Information

In April 2009, DG–1226 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on November 03, 2009. Electronic copies of Regulatory Guide 1.174, Revision 2 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 4th day of May, 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–11832 Filed 5–12–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–15; Order No. 726]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Gwynedd, Pennsylvania post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* May 18, 2011; *deadline for notices to intervene:* June 3, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on May 3, 2011, the Commission received a petition for review of the closing of the Gwynedd, Pennsylvania post office. The petition, which was filed by Christina Surowiec (Petitioner), is postmarked May 2, 2011, and was posted on the Commission's Web site May 4, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–15 to consider Petitioner's appeal. If Petitioner would like to further explain her position with **SUPPLEMENTARY INFORMATION** or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than June 7, 2011.

Categories of issues apparently raised. Preliminarily, Petitioner raises several issues, including failure to consider the effect on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)), and failure to observe procedures required by law (*see* 39 U.S.C. 404(d)(5)(B)). In addition, Petitioner contends that the Postal Service failed to consider relevant facts, and that its determination to close the Gwynedd post office is arbitrary and capricious.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The

deadline for the Postal Service to file the administrative record with the Commission is May 18, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is May 18, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions will also be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case must be filed on or before June 3, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record regarding this appeal no later than May 18, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than May 18, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Richard A. Oliver is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

PROCEDURAL SCHEDULE

May 3, 2011	Filing of Appeal.
May 18, 2011	Deadline for the Postal Service to file the administrative record in this appeal.
May 18, 2011	Deadline for the Postal Service to file any responsive pleading.
June 3, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
June 7, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
June 27, 2011	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
July 12, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
July 19, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
August 30, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5) and (6)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–11781 Filed 5–12–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–14; Order No. 725]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Tateville, Kentucky post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* May 18, 2011; *deadline for notices to intervene:* June 3, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on May 3, 2011, the Commission received three petitions for review of the closing of the Tateville, Kentucky post office. Petitions were filed by Rebecca Kroell, Glenn Walker, and Nancy Walker (Petitioners). All three petitions are postmarked April 28, 2011, and were posted on the Commission's Web site May 4, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–14 to consider the three appeals. If Petitioners would like to further explain their positions with supplemental information or facts,

Petitioners may either file Participant Statements on PRC Form 61 or file briefs with the Commission no later than June 7, 2011.

Categories of issues apparently raised. Generally, the appeals are broadly worded and do not identify specific issues. However, Petitioner Glenn Walker appears to raise the issue of failure to consider the effect on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is May 18, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is May 18, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions will also be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Those, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case must be filed on or before May 31, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record regarding this appeal no later than May 18, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than May 18, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Richard A. Oliver is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

PROCEDURAL SCHEDULE

May 3, 2011	Filing of Appeal.
May 18, 2011	Deadline for the Postal Service to file the administrative record in this appeal.
May 18, 2011	Deadline for the Postal Service to file any responsive pleading.
June 3, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
June 7, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
June 27, 2011	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
July 12, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
July 19, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
August 26, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5) and (6)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–11782 Filed 5–12–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64447; File No. SR–Phlx-2011–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Rebates and Fees for Adding and Removing Liquidity

May 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 29, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Complex Order [3] Fees in Section I of its Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov*.

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 the proposed rule change is to amend Section I, Part B of the Exchange's Fee Schedule, entitled "Complex Order." Currently, the Fees for Removing Liquidity are assessed based upon the options class and the type of market participant order that removes liquidity: Customer, Directed Participants, Specialists,[4] Registered Options Traders,[5] SQTs,[6] RSQTs,[7] Broker-Dealers, Firms and Professional.[8] The Exchange is proposing to increase fees for five of those categories; the Broker-Dealer category (which currently pays the highest fee) and the Customer category are unaffected by this proposal.

Specifically, the Exchange proposes to amend the Complex Order Fees for Removing Liquidity in all Select Symbols including SPY, QQQ, IWM and AAPL. The Exchange proposes to assess the following complex order fees:

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Fee for Removing Liquidity in all Select Symbols except SPY, QQQ, IWM and AAPL	$0.25	$0.27	$0.29	$0.30	$0.35	$0.30
Fee for Removing Liquidity for SPY, QQQ, IWM and AAPL	0.00	0.27	0.29	0.30	0.35	0.30

Currently, the Exchange assesses the following Complex Order Fees for Removing Liquidity:

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Fee for Removing Liquidity in all Select Symbols except SPY, QQQ, IWM and AAPL	$0.25	$0.25	$0.27	$0.28	$0.35	$0.28

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[6] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[7] An RSQT is defined in Exchange Rule as elsewhere 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[8] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Fee for Removing Liquidity for SPY, QQQ, IWM and AAPL	0.00	0.25	0.27	0.28	0.35	0.28

The Exchange is proposing to amend the Complex Order Fees for Removing Liquidity in all Select Symbols including SPY, QQQ, IWM and AAPL for Directed Participants, Specialists, ROTs, SQTs, RSQTs, Firms, and Professionals. The Complex Order Fees for Removing Liquidity in all Select Symbols for Customers and Broker-Dealers will remain the same.

Additionally, the Exchange proposes to continue to assess Directed Participants a Fee for Removing Liquidity of $0.25 per contract during the Exchange's opening process. The Exchange proposes to continue to assess Specialists, ROTs, SQTs and RSQTs a Complex Order Fee of Removing Liquidity of $0.27 per contract during the Exchange's opening process.[9] The Exchange believes that these proposed fees will continue to encourage these market participants to transact orders during the opening process.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols.

The Exchange believes that the proposed amendments to the Complex Order Fees to Remove Liquidity in all Select Symbols are equitable in that the Exchange currently differentiates between options classes and categories of market participants. The existing differentiation recognizes the differing contributions made to the liquidity and trading environment on the Exchange, as well as the differing mix of orders entered. In addition, some market participants have obligations pursuant to Exchange rules which the Exchange recognizes in its pricing. The Exchange believes that attracting additional order flow to the Exchange benefits all market participants and seeks to generate such order flow in setting its fees and rebates.

Additionally, the proposal is equitable because the Exchange is proposing to increase the fees for all market participants by $0.02 per contract, except for Customers and Broker-Dealers. The Exchange believes that it is equitable and not unfairly discriminatory to continue to assess lower fees to Customers because all market participants benefit from Customer order flow. In addition, Broker-Dealers are assessed a higher rate as compared to other market participants and the Exchange is not seeking to increase that rate further.[12]

The Exchange believes that continuing to differentiate between market makers[13] as compared to Professionals, Firms and Broker-Dealers is equitable because market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.[14] Obligations, such as quoting obligations, are critical to ensure there is sufficient liquidity. The proposed differential as between Directed Participants and other market makers is equitable because it is the same $0.02 per contract differential which exists today between those categories of market participants.

The Exchange believes that the proposed fees are reasonable and equitable because they are within the range of fees or less than fees currently assessed by the Exchange for Single contra-side equity option orders.

The Exchange also believes that the proposed fees are reasonable and equitable because they are within the range of fees assessed by exchanges with which the Exchange competes. Specifically, the proposed fees are similar to fees ISE assesses for complex orders.[15] Additionally, the proposal would allow the Exchange to remain competitive with exchanges that employ a similar pricing scheme while maintaining a two cent differential that currently exists at options exchanges between fees charged for orders that take liquidity and directed complex orders. For example, ISE currently charges $0.28 per contract to market makers who remove liquidity from its complex order book by trading with orders that are preferenced to them compared to a $0.30 per contract for complex orders executed by market makers in select symbols. Finally, the Exchange believes the proposed fee increases are reasonable and equitable in that they apply equally to all market participants that were previously subject to these fees.

The Exchange's proposal to continue to assess Directed Participants a Fee for Removing Liquidity of $0.25 per contract and assess Specialists, ROTs, SQTs and RSQTs a Fee for Removing Liquidity of $0.27 per contract, during the Exchange's opening process, is both equitable and reasonable because the Exchange is seeking to incentivize those market makers to continue to provide liquidity during the Exchange's opening process by assessing them a lower fee as compared to Firms, Broker-Dealers and Professionals.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order Fees and opening process fees it assesses must be competitive with fees assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on the Exchange today and influences the proposals set forth above.

[9] Currently, Professionals, Directed Participants, Firms, Broker-Dealers, Specialists, ROTs, SQTs and RSQTs are assessed the Fees for Removing Liquidity in Part B on transactions resulting during the Exchange's opening process. Professionals, Firms and Broker-Dealers would continue to be assessed the Fees for Removing Liquidity in Part B to transactions resulting during the Exchange's opening process.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] International Securities Exchange, LLC ("ISE") assess its Non-ISE Market Marker (FARMM) a taker fee of $0.35 per contract fee as well. *See* ISE's Fee Schedule.

[13] The Exchange market maker category includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

[14] *See* Exchange Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[15] *See* ISE's Schedule of Fees. *See* also Securities Exchange Act Release No. 64303 (April 15, 2011) (SR–ISE–2011–18).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–63 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11764 Filed 5–12–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64445; File No. SR–BATS–2011–017]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add BATS Rule 11.22, Entitled "Data Products"

May 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2011, BATS Exchange, Inc. ("BATS" or 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 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 is proposing to continue to make available those data feeds provided by the Exchange to data recipients [3] without charge and to start making available the Latency Monitoring feed, which will also be available without charge. The Exchange also proposes to add language to its Rules to memorialize those data feeds that have already been approved by the Commission.[4]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue to make available, without charge, several of the Exchange's data feeds for receipt by Exchange data recipients. In addition, the Exchange proposes to introduce a new feed, the Latency Monitoring feed, which will also be available without charge. The free data feeds offered and proposed to be offered by the Exchange include: (i) TCP PITCH; (ii) TCP FAST PITCH; (iii) Multicast PITCH; (iv) TOP;

[3] Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data.

[4] BATS has separately filed a rule proposal and received approval to offer certain data products for which it assesses a fee but, outside of its fee schedule, did not propose written rules related to such data products. *See* Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 10332 (April 16, 2010).

(v) DROP; (vi) Historical data; and (vii) Latency Monitoring (collectively, the "Data Feeds"). Lastly, the Exchange proposes to add language to its Rules to memorialize those data feeds that have already been approved by the Commission (specifically, the Last Sale Feed and historical data for equities).[5]

The Exchange provides detailed and up to date technical information regarding each of the Data Feeds currently offered by the Exchange on its public Web site.[6] All orders and executions displayed through the Data Feeds are anonymous and do not contain the identity of the party that submitted the order.

By making the Data Feeds available free of charge, the Exchange believes that it enhances market transparency and fosters competition among orders and markets. At this time, the Exchange does not have plans to charge any fee associated with the receipt of the Data Feeds.[7] Of course, should the Exchange determine to charge fees associated with the Data Feeds, the Exchange will submit a proposed rule change to the Commission in order to implement those fees.

Below is a description of each of the Data Feeds. As specified in the descriptions below, the Data Feeds are applicable either to the Exchange's equity securities platform ("BATS Equities"), its equity options platform ("BATS Options"), or both.

(i) TCP PITCH

The BATS TCP PITCH data feed is available for BATS Equties only, and provides Exchange data recipients with depth of book quotations and execution information based on equity orders entered into the System[8] on an uncompressed feed. The PITCH feeds offered by BATS (including TCP FAST PITCH and Multicast PITCH) are the data feeds through which Exchange data recipients can receive full, real-time quotation and execution information. Each PITCH message reflects the addition, deletion or execution of an order in the System. TCP PITCH is the data feed used by Exchange data recipients to receive BATS PITCH information via a TCP/IP connection.

(ii) TCP FAST PITCH

The BATS TCP FAST PITCH data feed is available for BATS Equities only. The TCP FAST PITCH data feed, like TCP PITCH, offers depth of book quotations and execution information, however, unlike TCP PITCH, this data feed is compressed and packaged by BATS prior to transmission and is translated by the recipient. The Exchange plans to cease offering TCP FAST PITCH effective July 1, 2011.

(iii) Multicast PITCH

The BATS Multicast PITCH data feed is available for BATS Equities and BATS Options. The Multicast PITCH data feed, like TCP PITCH and TCP FAST PITCH, offers depth of book quotations and execution information, however, unlike BATS' other PITCH data feeds, this data feed is transmitted in a manner that can be processed more efficiently by recipients.

(iv) TOP

The BATS TOP data feed is available for BATS Equities only, and offers top of book quotations and last sale execution information based on equity orders entered into the System. By only providing top of book quotations and last sale information, TOP offers data recipients a significant reduction in required bandwidth and processing when compared to BATS' standard TCP PITCH data feed. The quotations made available via TOP provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

(v) DROP

The BATS DROP data feed is available for BATS Equities and BATS Options. BATS' DROP data feed offers information regarding the trading activity of a specific Member. This feed is typically used by Members or clearing firms to monitor trading activity. DROP information is only available to the Member to whom the specific data relates and those recipients expressly authorized by the Member, such as the Member's clearing firm or a third-party vendor who provides services to the Member. The Exchange offers two forms of DROP, one of which provides a record for each execution and the other of which provides a record of each order and each execution.

(vi) Historical Multicast PITCH

The BATS Historical Multicast PITCH data product is available for both BATS Equities and BATS Options, and offers up to three months of data on a T+1 basis. Such information can be downloaded from the Exchange's Web site. In addition, upon request, the Exchange provides data recipients with historical data on external hard drives. Although the Exchange charges for historical data related to its equity securities platform, Historical Multicast PITCH data related to BATS Options is made available to Exchange data recipients without charge. Historical data provided by the Exchange can be used for a variety of purposes. For instance, data recipients that wish to back-test certain trading strategies can use historical data for such purpose.

(vii) Latency Monitoring

The BATS Latency Monitoring data product will initially be available for BATS Equities only. The Latency Monitoring data product will offer real-time latency information based on equity orders entered into the System to data recipients on an uncompressed feed. This data feed will provide various statistics to data recipients based on the latency from when an order enters the BATS network until the time that the order appears on a particular BATS data feed. The Exchange will initially present various statistics aggregated across the exchange and also separated by matching engine unit including minimum latency, maximum latency, average latency, standard deviation, and the number of samples observed. The Exchange may add additional aggregate statistics in the future. In addition, the Exchange may also add other latency measures to the data feed in the future, to the extent a different method becomes relevant. The latency data will not be member or port specific. This data feed does not include any quotation or execution information.

2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposed change is consistent with Section 6(b)(5) of the

[5] *See supra* note 4.

[6] *http://www.batstrading.com/support/#menu-md-docs.*

[7] The Exchange does not charge directly for any of the Data Feeds, though it does charge for ports used for receipt of data from the Exchange in order to offset certain infrastructure costs. These fees apply to ports associated with receipt of all of the Data Feeds except for Multicast PITCH, recipients of which are provided with 12 pairs of the requisite ports free of charge. *See* Securities Exchange Act Release No. 60586 (August 28, 2009), 74 FR 46256 (September 8, 2009) (SR–BATS–2009–026) (order approving proposal to impose fees for ports used for order entry and receipt of market data); *see also* Securities Exchange Act Release No. 63857 (February 7, 2011), 76 FR 7891 (February 11, 2011) (SR–BATS–2011–004) (notice of filing and immediate effectiveness of proposed rule change related to BATS Exchange fees, including modification of port fees).

[8] As defined in BATS Rule 1.5(aa), the term "System" means "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

[9] 15 U.S.C. 78f(b).

Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of BATS equity and options market data along with information regarding the Exchange's internal latencies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BATS requests that the Commission waive the 30-day operative delay in order to allow BATS to continue to provide without interruption the Data Feeds that are already available, voluntary, and free to subscribers. In addition, BATS requests waiver of the 30-day operative delay for the Latency Feed because it is ready for distribution, voluntary, free to receive, and contains only aggregate statistical information related to the latency of the System. BATS believes that waiver of the operative delay will allow it to continue providing market participants that use the Data Feeds with useful real-time and historical data concerning orders that have been entered, executions that have occurred, and the latency of the system, consistent with other products provided by other exchanges. The Commission believes that waiving the 30-day operative delay[15] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[16] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–017 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11767 Filed 5–12–11; 8:45 am]

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[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BATS has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] 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).

[16] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64452; File No. SR–EDGX–2011–13]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

May 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

For customer internalization (*i.e.,* same MPID),[4] currently there is no charge nor rebate. This was because when the Exchange launched in July 2010 the rebate for adding liquidity ($0.0029 per share) was offset by the fee for removing liquidity ($0.0029 per share). This situation yields Flag "E." During the Pre-Opening and Post-Closing sessions, there are also no charges nor rebates, but this situation yields Flag "5" per side of an execution (adding liquidity/removing liquidity). The Exchange is now proposing to charge $0.0001 per share per side of an execution (for adding liquidity and for removing liquidity) for Flags E and 5 instead of the standard or tiered rebate/removal rates. Therefore, Members would incur a total transaction cost of $0.0002 per share for both sides of an execution for customer internalization.

Currently, orders that add liquidity to Midpoint Match ("MPM") [5], a fee of $0.0010 per share is charged and a flag "MM" is yielded. For orders that remove liquidity from MPM, a fee of $0.0010 per share is charged for removing liquidity from MPM and yield flag "MT." In both cases, the Exchange is proposing to increase these fees to $0.0012 per share.

Currently, Members can qualify for the Mega Tier rebate of $0.0033 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) AND add a minimum of 25,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. In addition, for meeting the aforementioned criteria, Members will pay a reduced rate for removing liquidity of $0.0029 for Flags N, W, and 6.

The Exchange is proposing to amend the above Mega Tier rebate by increasing the rebate to $0.0034 per share, decreasing the amount needed to add or route to 4,000,000 shares of average daily volume during the pre and post markets from 5,000,000 shares, and increasing from 25,000,000 to 38,000,000 the number of shares of average daily volume ("ADV") on EDGX required to be added during both market hours and pre and post-trading hours. The amended rebate would thus read as follows: Members can qualify for the Mega Tier and be provided a rebate of $0.0034 per share for all liquidity posted on EDGX if they add or route at least 4,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) AND add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. In addition, for meeting the aforementioned criteria, Members will pay a reduced rate for removing liquidity of $0.0029 for Flags N, W, and 6.

Finally, the Exchange is proposing to make a technical correction to the fee schedule to replace the term "order type" with "routing strategy" throughout the fee schedule in order to conform to language in Rule 11.9(b)(3). These amendments will appear in the text for Flags K, L, Q, T, Z, 2, 8, 9, BY, CL, SW, and footnote 8.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on May 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the increased fee for customer internalization of $0.0001 per share per side of an execution for both Flags E (regular trading session) and 5 (pre and post market) represents an equitable allocation of reasonable dues, fees, and other charges as it is designed to introduce a nominal and reasonable fee for members who inadvertently match with one another, thereby discouraging potential wash sales. The increased fee also allows the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. Finally, the fee is equitable in that it is in line with the EDGX fee structure which currently has a maker/taker spread of $0.0007 per share (the standard rebate to add liquidity on EDGX is $0.0023 per share, while the standard fee to remove liquidity is $0.0030 per share). EDGX also has a variety of tiered rebates ranging from $0.0023–$0.0034 per share (as proposed), which makes its maker/taker spreads range from $.0007 (standard add–standard removal rate), $0 (standard removal rate–Super Tier rebate), −$0.0001, (standard removal rate–Ultra Tier rebate) −$0.0002 (standard removal rate–Mega Tier rebate of $0.0032), and −$.0004 (standard removal rate–proposed Mega Tier rebate of $0.0034 per share). As a result of the customer internalization charge, Members who internalized would be charged $0.0001 per share per side of an execution (total of $0.0002 per share) instead of capturing the maker/taker spreads resulting from achieving the tiered rebates, as described above.

As mentioned above, when the Exchange launched in July 2010, the maker/taker spread was zero (0). This increased fee per side of an execution ($.0001 per side instead of free), yielding a total cost of $0.0002, thus brings the internalization fee in line with the current maker/taker spreads.[8] The Exchange believes that the

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] This occurs when two orders presented to the Exchange from the same Member (*i.e.,* MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. Members are advised to consult Rule 12.2 respecting fictitious trading.

[5] As defined in EDGX Rule 11.5(c)(7).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] The Exchange will work promptly to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.

proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that the proposed increased fees from $0.0010 per share to $0.0012 per share for the "MT" flag for removing liquidity from MPM and to the "MM" flag for adding liquidity to MPM represent an equitable allocation of reasonable dues, fees, and other charges as such increased fees offset the Exchange's administrative and other operational costs.

The $0.0012 per share rate for the MT flag is a modest rate increase for an already low cost order type (MPM) within EDGX. Such rate is competitive and superior to comparable exchange standard removal rates of $0.0030 per share (Nasdaq), $0.0030 per share (NYSE Arca), $0.0023 per share (NYSE), and $0.0028 per share (BATS BZX). The fee is also equitable as it is competitive with other fees assessed for routing strategies that access low cost destinations, such as ROUZ, as defined in Rule 11.9(b)(3)(c)(v) (yields Flag Z, $0.0010 per share) and ROUD/ROUE, as defined in Rules 11.9(b)(3)(b) and 11.9(b)(3)(c)(i) (Flag T, $0.0012 per share).

The increased fee for the "MM" flag of $0.0012 per share also represents a modest increase to an already low cost order type within EDGX. The EDGX MPM liquidity providers ("MM flag") will pay a premium of $0.0012 per share to interact with liquidity seekers ("MT flag") looking to access low cost liquidity in MPM, who in turn will pay a fee of $0.0012 per share. Finally, the rate is reasonable when compared to similar fees assessed by EDGA Exchange to add hidden liquidity (non-displayed orders) ($0.0010 per share provided certain volume thresholds are met). The rate is also reasonable when compared to rebates on Nasdaq for adding liquidity using non-displayed orders, of $0.0010 or $0.0015, depending on if a tier is met. The Exchange believes that the proposed rates are non-discriminatory in that they apply uniformly to all Members.

The proposed Mega tier rebate proposed ($0.0034 per share for all liquidity posted on EDGX if Members add or route at least 4,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM AND add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours) represents an equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

The proposed Mega Tier rebate of $0.0034 (currently $0.0033 per share) and the alternative current Mega Tier rebate of $0.0032 per share have the most stringent criteria associated with them, and are $0.0003/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0004/$0.0002 greater than the Super Tier rebate ($0.0030 per share).

For example, based on average TCV for March 2011 (8.0 billion), in order for a Member to qualify for the proposed Mega Tier rebate of $0.0034, the Member would have to add or route at least 4,000,000 shares of average daily volume during pre and post-trading hours and add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. The criteria for this tier is the most stringent as fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions. The Exchange believes that this higher rebate awarded to Members would incent liquidity during these trading sessions. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate. In addition, the increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are non-discriminatory because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

Another way a Member can qualify for the current Mega Tier (with a rebate of $0.0032 per share) would be to post 0.75% of TCV. Based on average TCV for March 2011 (8.0 billion), this would be 60 million shares on EDGX. A second method to qualify for the rebate of $0.0032 per share would be to post 15,000,000 shares more than the Member's February 2011 average daily volume, provided that the Member's February 2011 average daily volume equals or exceeds 1,000,000 shares added to EDGX.

In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier, the Member would have to post 0.50% of TCV. Based on average TCV for March 2011 (8.0 billion shares), this would be 40 million shares on EDGX.

Finally, the Super Tier has the least stringent criteria of the tiers mentioned above. In order for a Member to qualify for this rebate of $0.0030 per share, the Member would have to post at least 10 million shares on EDGX. As stated above, these rebates also result, in part, from lower administrative and other costs associated with higher volume.

The Exchange believes that the proposed rebate is non-discriminatory in that it applies uniformly to all Members.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2011–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[11] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–13 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11763 Filed 5–12–11; 8:45 am]

BILLING CODE 8011–01–P

[11] The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGX, and at the Commission's Public Reference Room.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64446; File No. SR–Phlx–2011–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Options Floor Broker Subsidy

May 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 29, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section VIII of its Fee Schedule titled the "Options Floor Broker Subsidy."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) Eliminate the threshold requirement that a member organization with Exchange registered floor brokers must have more than an average of 100,000 executed contracts per day in the applicable month; (ii) amend the computation for eligible contracts; and (iii) amend the eligible contracts per tier and monthly volume subsidy payments. The Exchange believes that the proposed amendments could enable a member organization to receive a higher subsidy because the Exchange is changing from a daily average to a monthly total calculation to determine the number of contracts traded.

Eliminating a Threshold

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with Exchange registered floor brokers that enter eligible contracts into the Exchange's Floor Broker Management System ("FBMS").[3] To qualify for the per contract subsidy, a member organization with Exchange registered floor brokers must have more than 100,000 average executed contracts per day in the month ("100,000 contract threshold").[4] Only the volume from orders entered by floor brokers into FBMS and subsequently executed on the Exchange qualifies. The

[3] FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. *See* Exchange Rule 1080, commentary .06.

[4] For purposes of calculating the 100,000 threshold, customer-to-customer transactions, customer-to-non-customer transactions, and non-customer-to-non-customer transactions are currently included.

100,000 contract threshold is calculated per member organization floor brokerage unit. Where two or more member organizations with Exchange registered floor brokers each entered one side of a transaction into FBMS, the executed contracts are divided equally among qualifying member organizations that participate in that transaction.[5]

The Exchange is proposing to eliminate the 100,000 contract threshold. The Exchange believes that this threshold is no longer necessary because the Exchange is changing to a monthly total calculation. In the future, all eligible contracts will qualify for a subsidy rather than just those that are entered by members exceeding the 100,000 contract threshold.

Computation for Eligible Contracts

Currently, customer-to-customer transactions qualify towards the 100,000 contract threshold, but do not qualify for the subsidy. Dividend, merger and short stock interest strategies do not qualify towards the 100,000 contract threshold or the per contract subsidy. The largest component of a Complex Order counts toward the 100,000 contract threshold but neither that component nor any other component of the Complex Order qualifies for the per contract subsidy. Firm facilitation transactions count towards reaching the 100,000 contract threshold, but no per contract subsidy is paid for a firm facilitation transaction.

The Exchange is proposing to amend the computation of eligible contracts. Customer-to-customer executions, dividend, merger and short stock interest strategies and firm facilitation transactions will be excluded from the eligible contract computations.

The Exchange is deleting the references to the 100,000 contract threshold as proposed herein. Therefore, the Exchange is eliminating the consideration of the largest component of a Complex Order (i.e., the component that includes the greatest number of contracts) counting toward the 100,000 contract threshold; the 100,000 contract threshold would no longer exist. The Options Floor Broker Subsidy would now apply to any contracts that are executed as part of a Complex Order.

Eligible Contracts per Tier/Monthly Volume Subsidy Payments

Currently, a per contract subsidy is paid based on the average daily contract volume for that month, which includes customer-to-non-customer transactions that are in excess of 100,000 contracts. These contracts may include customer-to-customer transactions for the purposes of reaching a tier, but as stated above, a per contract subsidy would not be paid on these executions.

The Exchange is amending the Options Floor Broker Subsidy to change the "Per Contract Average Daily Volume Subsidy Payment" to a "Per Eligible Contract Monthly Volume Subsidy Payment." In other words, the computation would not be an average daily computation but a monthly total of all eligible contracts as proposed herein.

Currently, the Exchange pays an average daily volume subsidy payment as follows:

PER CONTRACT AVERAGE DAILY VOLUME SUBSIDY PAYMENT

Tier I	Tier II	Tier III
100,001 to 200,000	200,001 to 300,000	300,001 and greater.
$0.02 per contract	$0.08 per contract	$0.09 per contract.

The Exchange is proposing to amend the tiers and payments as follows:

PER ELIGIBLE CONTRACT MONTHLY VOLUME SUBSIDY PAYMENT

Tier I	Tier II	Tier III	Tier III
0 to 1,250,000	1,250,001 to 2,250,000	2,250,001 to 5,250,000	5,250,001 and greater.
$0.00 per contract	$0.03 per contract	$0.05 per contract	$0.09 per contract.

The Exchange is proposing to amend the remainder of the Fee Schedule to conform to the proposed rule changes.

The Exchange is also proposing to remove the following text from the Fee Schedule: "based on the amount of customer-to-customer contracts, a member organization could enter Tier II or a higher tier due to the amount of customer-to-customer contract volume," because the Exchange believes that language is unnecessary.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed amendments to the Options Floor Broker Subsidy are equitable and reasonable because member organizations with Exchange registered floor brokers would continue to be provided an equal opportunity to receive a subsidy. Additionally, any member organization is free to establish floor brokerage operations on the floor of the Exchange, and, as such, would have more opportunity to earn additional payments for attracting additional order flow to the Exchange.

The Exchange believes that rewarding members that contribute the most liquidity or executions to the Exchange is reasonable and equitable and therefore the tiered fees will continue to uniformly benefit all market

[5] When computing the threshold amount, the Exchange would first count all customer-to-customer transactions and then all other customer-to-non-customer transactions. *See also* Securities Exchange Act Release Nos. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR–Phlx–2008–08) (adopting a tiered per contract floor broker options subsidy payable to member organization with Exchange registered floor brokers), 62403 (June 30, 2010), 75 FR 39301 (July 8, 2010) (SR–Phlx–2010–80) (an amendment to the threshold volume requirements and per contract average daily volume subsidy payment).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

participants. The Exchange believes that by amending the computation from an average daily computation to a monthly computation and also amending the tier levels, because the computation is based on a total monthly volume, additional member organizations could benefit from the ability to obtain greater subsidy payments. The Exchange also believes that the proposed amendments to the rates paid to member organizations are both reasonable and equitable because the Exchange continues to pay member organizations the subsidy. Although the rates are lowered, the Exchange added an additional tier which provides member organizations the ability to obtain the same or larger subsidy payments based on volume, potentially with lower volume.

The Exchange also believes that the amendments to the computations to exclude customer-to-customer executions, dividend, merger and short stock interest strategies, and firm facilitation transactions are reasonable because the proposal to compute the monthly total eligible contracts, which could result in a greater number of eligible contracts, may still provide member organizations with the same or greater benefits as the previous subsidy. In addition, the proposals to amend the computation are equitable because the computations apply uniformly to all member organizations.

Finally, the Exchange does not believe that this subsidy is unreasonable or discriminatory because any floor broker is capable of meeting the volume criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–62 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11765 Filed 5–12–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64444; File No. SR–BYX–2011–012]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add BYX Rule 11.22, Entitled "Data Products"

May 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2011, BATS Y–Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to continue to make available those data feeds provided by the Exchange to data recipients [3] without charge and to start making available the Latency Monitoring feed, which will also be available without charge. The Exchange also proposes to add language to its Rules to memorialize those data feeds that have already been approved by the Commission.[4]

The text of the proposed rule change is available at the Exchange's Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data.

[4] BATS has separately filed a rule proposal and received approval to offer certain data products for which it assesses a fee but, outside of its fee schedule, did not propose written rules related to such data products. *See* Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 10332 (April 16, 2010).

at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue to make available, without charge, several of the Exchange's data feeds for receipt by Exchange data recipients. In addition, the Exchange proposes to introduce a new feed, the Latency Monitoring feed, which will also be available without charge. The free data feeds offered and proposed to be offered by the Exchange include: (i) TCP PITCH; (ii) TCP FAST PITCH; (iii) Multicast PITCH; (iv) TOP; (v) DROP; (vi) Historical Data; and (vii) Latency Monitoring (collectively, the "Data Feeds").

The Exchange provides detailed and up to date technical information regarding each of the Data Feeds currently offered by the Exchange on its public Web site.[5] All orders and executions displayed through the Data Feeds are anonymous and do not contain the identity of the party that submitted the order.

By making the Data Feeds available free of charge, the Exchange believes that it enhances market transparency and fosters competition among orders and markets. At this time, the Exchange does not have plans to charge any fee associated with the receipt of the Data Feeds.[6] Of course, should the Exchange determine to charge fees associated with the Data Feeds, the Exchange will submit a proposed rule change to the Commission in order to implement those fees. Below is a description of each of the Data Feeds.

(i) TCP PITCH

The BYX TCP PITCH data feed provides Exchange data recipients with depth of book quotations and execution information based on equity orders entered into the System[7] on an uncompressed feed. The PITCH feeds offered by BYX (including TCP FAST PITCH and Multicast PITCH) are the data feeds through which Exchange data recipients can receive full, real-time quotation and execution information. Each PITCH message reflects the addition, deletion or execution of an order in the System. TCP PITCH is the data feed used by Exchange data recipients to receive BYX PITCH information via a TCP/IP connection.

(ii) TCP FAST PITCH

The BYX TCP FAST PITCH data feed, like TCP PITCH, offers depth of book quotations and execution information, however, unlike TCP PITCH, this data feed is compressed and packaged by BATS prior to transmission and is translated by the recipient. The Exchange plans to cease offering TCP FAST PITCH effective July 1, 2011.

(iii) Multicast PITCH

The BYX Multicast PITCH data feed, like TCP PITCH and TCP FAST PITCH, offers depth of book quotations and execution information, however, unlike other PITCH data feeds offered by BYX, this data feed is transmitted in a manner that can be processed more efficiently by recipients.

(iv) TOP

The BYX TOP data feed offers top of book quotations and last sale execution information based on equity orders entered into the System. By only providing top of book quotations and last sale information, TOP offers data recipients a significant reduction in required bandwidth and processing when compared to BYX's standard TCP PITCH data feed. The quotations made available via TOP provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

(v) DROP

The BYX DROP data feed offers information regarding the trading activity of a specific Member. This feed is typically used by Members or clearing firms to monitor trading activity. DROP information is only available to the Member to whom the specific data relates and those recipients expressly authorized by the Member, such as the Member's clearing firm or a third-party vendor who provides services to the Member. The Exchange offers two forms of DROP, one of which provides a record for each execution and the other of which provides a record of each order and each execution.

(vi) Historical Data

The BYX Historical Data product offers up to three months of BYX data on a T+1 basis. Such information can be downloaded from the Exchange's Web site. In addition, upon request, if an Exchange data recipient provides an external hard drive to the Exchange, the Exchange will download additional data onto the drive and return it to the requesting party. Historical data provided by the Exchange can be used for a variety of purposes. For instance, data recipients that wish to back-test certain trading strategies can use historical data to do so. As another example, data recipients that provide market information through public Web sites or develop dynamic stock tickers, portfolio trackers, price/time graphs and other visual systems can use historical data for such purposes.

(vii) Latency Monitoring

The BYX Latency Monitoring data product will offer real-time latency information based on equity orders entered into the System to data recipients on an uncompressed feed. This data feed will provide various statistics to data recipients based on the latency from when an order enters the BYX network until the time that the order appears on a particular BYX data feed. The Exchange will initially present various statistics aggregated across the exchange and also separated by matching engine unit including minimum latency, maximum latency, average latency, standard deviation, and the number of samples observed. The Exchange may add additional aggregate statistics in the future. In addition, the Exchange may also add other latency measures to the data feed in the future, to the extent a different method becomes relevant. The latency data will not be member or port specific. This data feed does not include any quotation or execution information.

2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules

[5] *http://www.batstrading.com/support/#menu-md-docs.*

[6] The Exchange does not charge directly for any of the Data Feeds, nor does it currently charge any connectivity fees.

[7] As defined in BYX Rule 1.5(aa), the term "System" means "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of BYX data along with information regarding the Exchange's internal latencies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BYX requests that the Commission waive the 30-day operative delay in order to allow BYX to continue to provide without interruption the Data Feeds that are already available, voluntary, and free to subscribers. In addition, BYX requests waiver of the 30-day operative delay for the Latency Feed because it is ready for distribution, voluntary, free to receive, and contains only aggregate statistical information related to the latency of the System. BYX believes that waiver of the operative delay will allow it to continue providing market participants that use the Data Feeds with useful real-time and historical data concerning orders that have been entered, executions that have occurred, and the latency of the system, consistent with other products provided by other exchanges. The Commission believes that waiving the 30-day operative delay[14] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BYX–2011–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[15] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2011–012 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11766 Filed 5–12–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BYX has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] 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).

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; City Network, Inc.

May 11, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of City Network, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

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. EDT on May 11, 2011, through 11:59 p.m. EDT on May 24, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–11904 Filed 5–11–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; American Resource Technologies, Inc., Apollo Resources International, Inc., Bloodhound Search Technologies, Inc., BlueStar Health, Inc., Columbus Networks Corp., Continental Fuels, Inc., Data Race, Inc., Golden Oil Co., and Ness Energy International, Inc., Order of Suspension of Trading

May 11, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Resource Technologies, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Apollo Resources International, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bloodhound Search Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bluestar Health, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Columbus Networks Corporation because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Continental Fuels, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Data Race, Inc. because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Golden Oil Co. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ness Energy International, Inc. because it has not filed any periodic reports since the period ended December 31, 2006.

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. EDT on May 11, 2011, through 11:59 p.m. EDT on May 24, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–11905 Filed 5–11–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29666; 812–13902]

UBS AG., et al.; Notice of Application and Temporary Order

May 9, 2011.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against UBS Financial Services Inc. (“UBSFS”) on May 6, 2011 by the United States District Court for the District of New Jersey (“Injunction”) until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: UBSFS; UBS AG; UBS IB Co-Investment 2001 GP Limited (“ESC GP”); UBS Alternative and Quantitative Investment LLC (“UBS Alternative”); UBS Willow Management, L.L.C. (“UBS Willow”), UBS Eucalyptus Management, L.L.C. (“UBS Eucalyptus”) and UBS Juniper Management, L.L.C. (“UBS Juniper”) (UBS Willow, UBS Eucalyptus, and UBS Juniper are referred to collectively as “UBS Alternative Managers”); UBS Global Asset Management (Americas) Inc. (“UBS Global AM Americas”); and UBS Global Asset Management (US) Inc. (“UBS Global AM US”) (each an “Applicant” and collectively, the “Applicants”).[1]

DATES: *Filing Dates:* The application was filed on May 9, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 3, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; *Applicants:* UBSFS, 1200 Harbor Boulevard, Weehawken, NJ 07086; UBS AG and ESC–GP, c/o UBS Investment Bank, 677 Washington Boulevard, Stamford, CT 06901; UBS Alternative, 677 Washington Boulevard, Stamford, CT 06901; UBS Willow, UBS Eucalyptus, and UBS Juniper, 299 Park Avenue, 29th Floor, New York, NY 10171; UBS Global AM Americas, One North Wacker Drive, Chicago, IL 60606 and UBS Global AM US, 1285 Avenue of the Americas, 12th Floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at 202–551–6811 or Daniele Marchesani, Branch Chief, at 202–551–6821 (Division of Investment Management,

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which USBFS is or may become an affiliated person (together with the applicants, the “Covered Persons”).

Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. UBS AG, a company organized under the laws of Switzerland, is a Swiss-based global financial services firm. UBS AG and its subsidiaries provide global wealth management, securities and retail and commercial banking services. Each of the Applicants is either directly or indirectly controlled by UBS AG. UBSFS is a corporation organized under the laws of Delaware and provides a wide range of wealth management services, including financial planning and wealth management consulting, asset-based and advisory services and transaction-based services, to clients in the United States and throughout the world. UBSFS, UBS Alternative, UBS Alternative Managers,[2] and UBS Global AM Americas are investment advisers registered under the Investment Advisers Act of 1940, and all but UBSFS currently serve as investment advisers to registered management investment companies ("Funds"). UBSFS and UBS Global AM US are registered as broker-dealers under the Securities and Exchange Act of 1934 ("Exchange Act"). UBS Global AM US serves as principal underwriter to various open-end Funds. UBS AG and ESC GP provide investment advisory services to employees' securities companies ("ESCs"), as defined in section 2(a)(13) of the Act, which provide investment opportunities for highly compensated key employees, officers, directors and current consultants of UBS AG and its affiliates.

2. On May 6, 2011, the United States District Court for the District of New Jersey entered a judgment, which included the Injunction, against UBSFS ("Judgment") in a matter brought by the Commission.[3] The Commission alleged in the complaint ("Complaint") that UBSFS violated section 15(c) of the Exchange Act on account of the conduct of certain former employees of UBSFS with respect to the temporary investment of proceeds of tax-exempt municipal securities in reinvestment products such as guaranteed investment contracts, repurchase agreements, and forward purchase agreements. Beginning in 2000 and continuing through 2004, the former employees are alleged to have participated in conduct in connection with the competitive bidding for these products that involved the steering of business to UBSFS and the submission of purposefully non-winning bids in UBSFS's capacity as a reinvestment provider, and the steering of business to other firms in the UBSFS's capacity as a bidding agent. Without admitting or denying any of the allegations in the Complaint, UBSFS consented to the entry of the Injunction and other equitable relief, including certain undertakings.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that UBSFS is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting as an investment adviser or depositor of any registered investment company or ESC, or principal underwriter for any open-end Fund, registered unit investment trust or registered face-amount certificate company ("Fund Service Activities"). Applicants note that (i) none of the current or former directors, officers, or employees of the Applicants (other than UBSFS) had any knowledge of, or had any involvement in, the conduct alleged in the Complaint; and (ii) the personnel at UBSFS who were involved in the violations alleged in the Complaint are no longer employed by UBSFS. Applicants further note that the business unit in which the former employees were employed was closed by UBSFS in June 2008. Applicants state that the personnel at UBSFS who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the registered investment companies they serve and the registered investment companies' shareholders or unitholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

[2] UBS Alternative is managing member of UBS Alternative Managers.

[3] *Securities and Exchange Commission* v. *UBS Financial Services Inc.*, Case No. 11–cv–2539–WJM (D. N.J. May 6, 2011).

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect approximately 550 employees that are involved in those activities. Applicants also state that disqualifying UBS AG and ESC GP from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for the benefit of key employees, officers, directors and current consultants of UBS AG and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with UBS AG to manage the ESCs. In addition, participants in the ESCs have subscribed for interests in the ESCs with the expectation that the ESCs would be managed by an affiliate of UBS AG.

7. Applicants state that Applicants and certain other affiliated persons of UBSFS have previously received orders under section 9(c) of the Act, as the result of conduct that triggered section 9(a), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from May 6, 2011, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11750 Filed 5–12–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12550 and #12551]

Mississippi Disaster #MS–00047

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–1972–DR), dated 04/29/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Associated Flooding.

Incident Period: 04/15/2011 through 04/28/2011.

DATES: *Effective Date:* 04/29/2011.

Physical Loan Application Deadline Date: 06/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 01/30/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/29/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clarke, Greene, Hinds, Jasper, Kemper, Lafayette, Monroe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12550C and for economic injury is 12551C.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–11448 Filed 5–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12552 and # 12553]

Georgia Disaster Number GA–00032

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1973–DR), dated 04/29/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Associated Flooding.

Incident Period: 04/27/2011 through 04/28/2011.

DATES: *Effective Date:* 05/01/2011.

Physical Loan Application Deadline Date: 06/28/2011.

Eidl Loan Application Deadline Date: 01/30/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Georgia, dated 04/29/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Meriwether, Monroe, Morgan, Rabun.

Contiguous Counties: (Economic Injury Loans Only): Georgia:

Bibb, Crawford, Habersham, Jasper, Jones, Newton, Talbot, Towns, Walton.
North Carolina:
Clay, Jackson, Macon.
South Carolina:
Oconee.
All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–11444 Filed 5–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[PUBLIC NOTICE: 7456]

Culturally Significant Objects Imported for Exhibition Determinations: "National Geographic Treasures of the Earth"

SUMMARY: 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, I hereby determine that the objects to be included in the exhibition "National Geographic Treasures of the Earth" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Children's Museum of Indianapolis, Indianapolis, IN, from on or about June 11, 2011, until on or about June 10, 2014, (or, in any event, for a duration not to exceed six years from June 11, 2011), is in the national interest. The Museum understands that immediately after the last day of the aforementioned exhibition or display period, the objects shall be repatriated back to the United Kingdom. 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 Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 7, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–11834 Filed 5–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2011, there were five applications approved. This notice also includes information on one application, approved in March 2011, inadvertently left off the March 2011 notice. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.2 9.

PFC Applications Approved

Public Agency: South Jersey Transportation Authority, Egg Harbor Township, New Jersey.

Application Number: 11–07–C–00–ACY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $9,079,204.

Earliest Charge Effective Date: June 1, 2011.

Estimated Charge Expiration Date: July 1, 2014.

Class of Air Carriers Not Required to Collect PFCs: Air taxi/commercial operators—nonscheduled/on-demand air carriers filing FAA Form 1800–31 and enplaning less than 500 passengers annually.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Atlantic City International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal apron expansion, phase 1B.

Environmental mitigation, phases V and VI.

Expand terminal building, phase 1 design.

Acquire equipment—rotating beacon tower replacement.

Install perimeter fencing.

Acquire radio equipment for emergency operations center.

Interactive employee training system.

Security cameras.

Snow removal equipment.

Update airport master plan study phases I and II.

Obstruction survey and wildlife assessment.

Decision Date: March 17, 2011.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Lafayette Airport Commission, Lafayette, Louisiana.

Application Number: 11–07–C–00–LFT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,000,000.

Earliest Charge Effective Date: May 1, 2013.

Estimated Charge Expiration Date: May 1, 2014.

Class of Air Carriers Not Required to Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lafayette Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Procurement and installation of aircraft loading bridge.

PFC development, implementation, and administration.

Decision Date: April 6, 2011.

FOR FURTHER INFORMATION CONTACT: Ilia Quinones, Louisiana/New Mexico Airports Development Office, (817) 222–5646.

Public Agency: County of Buncomb and City of Asheville, Asheville, North Carolina.

Application Number: 11–05–C–00–AVL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $6,098,948.

Earliest Charge Effective Date: August 1, 2011.

Estimated Charge Expiration Date: February 1, 2018.

Class of Air Carriers Not Required to Collect PFCs: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Asheville regional Airport.

Brief Description of Projects Approved for Collection and Use:

Landside roadway access and parking.

"A" gate terminal improvements.

Terminal roof replacement.

North general aviation area.

Preconditioned air and fixed ground power.

Airfield environmental assessment.

Wright Brothers Way extension.

Snow removal equipment.

Master plan update.

Airfield/roadway sweeper.

PFC application development.

PFC application administration.

Brief Description of Project Approved for Collection:

Runway 16/34 improvement program.

Brief Description of Project Partially Approved for Collection and Use:

Aircraft rescue and firefighting facility.

Determination: The approval of this project is limited to the minimum size facility needed to meet Part 139 requirements.

Brief Description of Disapproved Projects:

Aircraft rescue and firefighting equipment.

Determination: The proposed equipment was not required by Part 139 and, therefore, is not PFC eligible.

Glycol recovery vehicle.

Deicing vehicle.

Determination: Neither vehicle is PFC eligible.

Decision Date: April 21, 2011.

FOR FURTHER INFORMATION CONTACT: John Marshall, Atlanta Airports District Office, (404) 305–7153.

Public Agency: City of Valdosta, Georgia.

Application Number: 11–10–C–00–VLD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $472,800.

Earliest Charge Effective Date: June 1, 2011.

Estimated Charge Expiration Date: October 1, 2012.

Class of Air Carriers Not Required to Collect PFCs: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Valdosta Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Airport master plan update.

Terminal ramp (design).

Rehabilitate taxiway A (design).

Groove runway (design).

Rehabilitate taxiway A.

Grooving of 1,700 feet of runway 35 and associated work.

Airfield drainage rehabilitation (design).

Airfield drainage rehabilitation.

Prepare PFC application.

Programming, design, and construction of replacement aircraft rescue and firefighting building, including sitework.

Programming of new general aviation terminal sitework, entrance road, and apron improvements.

Acquire aircraft rescue and firefighting vehicle.

Commercial terminal building improvements.

Design and construction of new general aviation terminal sitework, entrance road, and apron.

Brief Description of Withdrawn Projects:

Programming and design of obstruction clearing—phase 1 runway 17/35.

Programming of replacement air traffic control tower.

Aircraft rescue and firefighting vehicle improvements.

Design and installation of security access control systems—phase 1.

Construction of obstruction clearing—phase 1 (runway 17/35).

Design and construction of replacement air traffic control tower, including sitework.

Date of Withdrawal: April 19, 2011.

Decision Date: April 25, 2011.

FOR FURTHER INFORMATION CONTACT: Anna Guss, Atlanta Airports District Office, (404) 305–7146.

Public Agency: Massachusetts Port Authority, Boston, Massachusetts.

Application Number: 10–06–C–00–BOS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $392,093,000.

Earliest Charge Effective Date: August 1, 2016.

Estimated Charge Expiration Date: December 1, 2023.

Class of Air Carriers Not Required to Collect PFCs: Nonscheduled/on-demand air carriers.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Boston Logan International Airport.

Brief Description of Project Approved for Collection at a $4.50 PFC Level:

Development of runway safety area for runway 33L.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Reconstruction of runway 22L.

Rehabilitation of taxiway N.

Access control to the airport operations area from terminal and ancillary buildings.

Access control data storage and server capacity enhancements.

Replacement of Fireboat Marine 1.

Terminal E gate department area modifications and baggage system upgrades.

Terminal A development.

Brief Description of Projects Partially Approved for Collection at a $4.50 PFC Level:

Airfield electrical system upgrades.

Terminal C checkpoint consolidation.

Determination: The public agency requested a PFC amount and project scope for each project above what was originally consulted without providing for new consultation on the increased amount and/or scope. Therefore, the approved amount and scope of each project is limited to the amount and scope previously provided during the consultation and public notice process.

Decision Date: April 25, 2011.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Montana Aeronautics Division, Helena, Montana.

Application Number: 11–01–C–00–VVYS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $277,202.

Earliest Charge Effective Date: June 1, 2011.

Estimated Charge Expiration Date: June 1, 2025.

Class of Air Carriers Not Required to Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class

accounts for less than 1 percent of the total annual enplanements at West Yellowstone Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate apron.

Rehabilitate runway 01/19.

Improve terminal building.

Acquire handicap passenger lift device.

Rehabilitate runway 01/19—phase 2.

Install runway vertical/visual guidance system.

Acquire aircraft rescue and firefighting vehicle.

Install perimeter fencing.

Install weather reporting equipment.

Improve terminal building.

Install weather reporting equipment.

Install enhanced taxiway markings.

Decision Date: April 28, 2011.

FOR FURTHER INFORMATION CONTACT: Dave Stelling, Helena Airports District Office, (406) 449–5257.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01–01–C–03–LCH Lake Charles, LA	04/06/11	$1,377,234	$1,877,234	10/01/09	10/01/11
01–04–C–01–EUG Eugene, OR	04/06/11	3,155,267	2,812,313	01/01/04	01/01/04
08–04–0–01–MFE McAllen, TX*	04/11/11	3,460,375	3,460,375	10/01/13	06/01/13
03–03–0–01–SBN South Bend, IN*	04/15/11	23,898,229	23,898,229	10/01/21	01/01/21
06–07–C–02–GJT Grand Junction, CO	04/18/11	8,330,000	15,857,760	08/01/23	01/01/24
01–04–C–01–CIC Chico, CA	04/21/11	536,747	468,782	12/01/09	12/01/09
01–03–C–02–GTF Great Falls, MT	04/21/11	8,501,340	8,826,161	09/01/18	08/01/18
04–05–C–01–ASE Aspen, CO	04/22/11	2,274,162	2,286,161	06/01/09	11/01/09

Notes: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For McAllen, TX, this change is effective on June 1, 2011. For South Bend, IN, this change is effective on July 1, 2011.

Issued in Washington, DC, on May 5, 2011.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2011–11572 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 2011, there were four applications approved. This notice also includes information on three applications, approved in February 2011, inadvertently left off the February 2011 notice. Additionally, five approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Texarkana Airport Authority, Texarkana, Arkansas.

Application Number: 11–07–C–00–TXK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $850,066.

Earliest Charge Effective Date: August 1, 2011.

Estimated Charge Expiration Date: September 1, 2018.

Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Texarkana Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Design/construct passenger terminal and land/airside.

PFC application development.

Decision Date: February 24, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Burns, Arkansas/Oklahoma Airports Development Office, (817) 222–5648.

Public Agency: Salt Lake City Corporation, Salt Lake City, Utah.

Application Number: 10–12–C–00–SLC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $70,253,000.

Earliest Charge Effective Date: June 1, 2011.

Estimated Charge Expiration Date: March 1, 2013.

Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing or required to file FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport (SLC).

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Runway 16L/34R pavement rehabilitation.

Concourse B—additional boarding bridges.

North cargo area.

Concourse and terminal improvements.

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $3.00 PFC Level:

Snow equipment storage facility.

Concourse B—vertical circulation improvement.

Egress doors improvements.

Deicing and snow control tanks.

Brief Description of Project Approved for Collection at SLC and Use at Bolinder Field-Toole Valley Airport (TVY) at a $3.00 PFC Level: Land acquisition-TVY easements.

Brief Description of Disapproved Projects: Purchase of wetlands credits.

Determination: The maintenance of replacement wetlands is not PFC eligible.

Joint seal runway 16R134L.

Joint seal runway 16R/34L—taxiways A and B.

Determination: Routine pavement maintenance is not PFC eligible.
3700 West (UTA) fiber infrastructure and improvement.
Determination: The public agency failed to provide information indicating that this project provided a benefit to the airport. Therefore, it does not meet the requirements of § 158.15(a).
Decision Date: February 25, 2011.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Cities of Pullman, Washington and Moscow, Idaho.
Application Number: 11–07–C–00–PUW.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $101,950.
Earliest Charge Effective Date: January 1, 2013.
Estimated Charge Expiration Date: November 1, 2013.
Class of Air Carriers Not Required To Collect PFCs: Non-scheduled air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pullman-Moscow Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Airport drainage improvements.
Procurement of aircraft rescue and firefighting vehicle.
Land acquisition.
Security enhancements.
Rehabilitate aircraft rescue and firefighting building.
PFC administration.
Decision Date: February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Miles, Seattle Airports District Office, (425) 227–2661.

Public Agency: City of Long Beach, California.
Application Number: 11–06–U–00–LGB.
Application Type: Use PFC revenue.
PFC Level: $4.50.
Total PFC Revenue Approved for Use in This Decision: $86,532,700.
Earliest Charge Effective Date: November 1, 2015.
Estimated Charge Expiration Date: March 1, 2029.
Class of Air Carriers Not Required To Collect PFCs: No change from previous decision.
Brief Description of Project Approved for Use: Terminal area improvements.
Doan Brook restoration.
Deicing environmental upgrades.
Main terminal roof replacement.
Main terminal boiler replacement.
Roadway expansion joint repair/replacement.
Airport-wide flight information display system/baggage information display system and signage replacement.
Airport-wide in-line baggage system design.
Airport master plan update.
Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:
Runway 10/28 runway safety area improvements.
South cargo ramp rehabilitation.
Taxiway N rehabilitation.
Security system enhancements.
Interactive Part 139 airport operations training program.
Brief Description of Project Partially Approved for Collection and Use at a $3.00 PFC Level: Main substation (MS1 and MS2) redundant electrical power feed and emergency generators.
Determination: The MS1 upgrade is only eligible to the extent it serves eligible facilities and the FAA determined that not all facilities served were eligible. Further, the FAA determined that the backup generators were not eligible.
Brief Description of Disapproved Project: Information technology network infrastructure upgrades.
Determination: The FAA determined that this project did not meet the requirements of § 158.15(b).
Decision Date: March 11, 2011.

FOR FURTHER INFORMATION CONTACT: Irene Porter, Detroit Airports District Office, (734) 229–2915.

Public Agency: City of Savannah and Savannah Airport Commission, Savannah, Georgia.
Application Number: 10–08–C–00–SAV.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $4,066,265.
Earliest Charge Effective Date: January 1, 2015.
Estimated Charge Expiration Date: April 1, 2016.
Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Savannah/Hilton Head International Airport.
Decision Date: March 1, 2011.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: City of Brownsville, Texas.
Application Number: 11–06–C–00–BRO.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $313,236.
Earliest Charge Effective Date: April 1, 2020.
Estimated Charge Expiration Date: April 1, 2021.
Class of Air Carriers Not Required To Collect PFCs: None.
Brief Description of Projects Approved for Collection and Use:
Rehabilitate taxiway E.
Rehabilitate runway lighting 13R/31L.
Apron lighting.
Perimeter fencing.
Airport drainage improvements.
Airfield guidance signs.
Miscellaneous terminal plan study.
Wildlife hazard assessments.
Taxiway B rehabilitation design.
Displace runway 17/35.
PFC application and administration fees.
Brief Description of Disapproved Project: Install airport beacons.
Determination: This project does not meet the requirements of § 158.25(c). The environmental review for the project is not complete.
Decision Date: March 3, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah Conner, Texas Airports Development Office, (817) 222–5682.

Public Agency: City of Cleveland, Ohio.
Application Number: 11–11–C–00–CLE.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $36,577,300.
Earliest Charge Effective Date: July 1, 2019.
Estimated Charge Expiration Date: February 1, 2021.
Class of Air Carriers Not Required To Collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Cleveland Hopkins International Airport.
Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Brief Description of Projects Approved for Collection and Use:

Asphalt pavement replacement-runway 19/1.
Construct taxiway A extension.
Rehabilitate taxiway B2, north end of taxiway B, taxiway C, and taxiway E1.
General aviation connector taxiway and site development of north terminal.
Terminal entrance walkways.
General aviation taxiways 4 and 5 shoulder edge lights.
Implementation and administrative costs for PFC no. 8, amendment No. 1 to PFC No. 7, and amendment No. 2 to PFC No. 6.
Environmental assessment north development.
Surface painted holding position signs.
Two valet bag belt systems.
Airport operations area obstruction survey.
Closed circuit television system replacement.
Interactive employee training upgrade.
Pre-conditioned air hose upgrade (five boarding bridges).

Brief Description of Projects Partially Approved for Collection and Use: Public address system replacement.

Determination: The approval is limited to that portion of the project needed to make required automatic security announcements and to feed these announcements into the public address system.

Lighting and reseal joints to runways: Add two airport operations area access gates; and replace failed taxiways and ramp concrete paving slabs.

Determination: The approval is limited to the cost associated with the runway lights. The public agency failed to provide any justification for the other project components.

Brief Description of Projects Approved for Collection:

Site mitigation.
Realign and construct Gulfstream Road/tunnel construction.
Taxiway A extension north-construction.
Electrical vault.
Taxiway H construction.
Storm water update.
Gulfstream Road/tunnel design.
Taxiway A design.
Taxiway H design.
Airfield electrical vault design.

Decision Date: March 17, 2011.

FOR FURTHER INFORMATION CONTACT: John Marshall, Atlanta Airports District Office, (404) 305–7153.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
04–07–C–04–JNU Juneau, AK	02/25/11	$3,566,606	$3,575,162	03/01/08	03/01/08
09–05–C–01–BRO Brownsville, TX	03/03/11	3,055,366	3,485,972	07/01/18	04/01/20
02–06–C–10–MSY New Orleans, LA	03/11/11	287,977,095	293,951,336	12/01/19	06/01/20
06–08–C–02–MSY New Orleans, LA	03/11/11	1,023,858	1,000,000	10/01/18	07/01/25
09–10–C–02–MSY New Orleans, LA	03/11/11	52,805,580	40,592,406	06/01/26	02/01/26

Issued in Washington, DC, on May 5, 2011.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2011–11574 Filed 5–12–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0024]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 16 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 13, 2011. The exemptions expire on May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On March 29, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 17481). That notice listed 16 applicants' case histories. The 16 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety

that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 16 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 16 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, optic atrophy, macular scar, macular degeneration, cataract, retinal detachment and prosthesis. In most cases, their eye conditions were not recently developed. 10 of the applicants were either born with their vision impairments or have had them since childhood. The 6 individuals who sustained their vision conditions as adults have had them for periods ranging from 13 to 40 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 16 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 2 to 58 years. In the past 3 years, two of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 29, 2011 notice (76 FR 17481).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 16 applicants, one of the applicants was convicted for moving violations and one of the applicants was involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads

built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 16 applicants listed in the notice of March 29, 2011 (76 FR 17481).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 16 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation is in favor of granting a Federal vision exemption to David Kibble, they indicated that they have reviewed the driving histories of this applicant and have no objections to FMCSA granting him a vision exemption.

Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts, David W. Bennett, Toby L. Carson, Fredrick M. DeHoff, Jr., Raul Donozo, Rick A. Ervin, Clifford D. Johnson, Dionicio Mendoza, David Kibble, Raymond J. Paiz, Tyler R. Peebles, Alfredo Reyes, Ronald M. Robinson, J. Bernando Rodriguez, Esequiel Rodriguez, Jr., David I. Sosby and Donald E. Stone from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 9, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–11792 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0162]

Petition for Waiver of Compliance

In accordance with part 211 of title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated October 15, 2010, the Union Pacific Railroad Company (UP), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at Title 49 Code of Federal Regulations (CFR) part 231 (Safety Appliance Standards). FRA assigned the petition Docket Number FRA–2010–0162.

Specifically § 231.24(b)(3) *End platforms* (*3*) *Location. One* (*1*) *on each end of car not more than eight (8) inches above center sill.* UP requests relief on cars where the dimensional requirements of eight inches above the center sill are not in compliance and contend all other measurements are in compliance within Plate "U" of Appendix D of the Motive Power and Equipment Compliance Manual.

UP stated twenty-one different car owners are affected by this requirement with the potential of exceeding 18,000 cars that are involved to correct the problem for cars constructed in 49 CFR 231.24. UP contends that in order to correct the problem, many cars require extensive modifications which are time consuming and labor intensive. Additionally, UP stated that private car owners are concerned with service delays associated with the necessary car modifications and repairs. In addition, UP believes its review of safety and personal injury records indicated no underlying safety issues that would prevent the requested provided relief.

UP states that other dimensional requirements for end platforms cover other cars beyond 49 CFR 231.24(b)(3). UP respectfully restates the waiver request to grant relief from the provisions of 49 CFR 231 Safety Appliance Standards with reference to end platforms be not more than eight inches above the car center sill.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
• *Fax:* 202–493–2251.
• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by June 27, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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

Issued in Washington, DC, on May 9, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–11774 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2010–0105]

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on September 13, 2010 (75 FR 55627–55628).

DATES: Comments must be submitted on or before June 13, 2011.

ADDRESS: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Randolph Atkins, Ph.D., Office of Behavioral Safety Research, National Highway Traffic Safety Administration, NTI–131, Room W46–500, 1200 New Jersey Ave, SE., Washington, DC 20590. Dr. Atkins' phone number is 202–366–5597 and his e-mail address is *randolph.atkins@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: System Analysis of Automated Speed Enforcement (ASE) Implementation.

Type of Request: New information collection requirement.

Abstract: A great many enforcement strategies are in use to combat speeding today. One important approach increasingly being used is Automated Speed Enforcement (ASE). A number of studies have shown the use of speed cameras for ASE to be effective in reducing traffic speeds. However, despite the effectiveness of speed cameras programs for ASE, it is often difficult to establish public acceptance for these programs and put them into place. The objectives of this study are to (1) Determine how the existing speed camera programs in the United States were developed and implemented; (2) Examine other variables that have affected these speed camera programs; and (3) Determine how all of these variables have affected the success of these programs. This information will be used to revise existing guidelines for ASE programs, help existing ASE programs improve their programs and provide new information on this countermeasure to assist other communities in establishing well-designed speed management programs, including ASE.

This study will conduct a census survey of existing ASE programs in the United States, as well as some recently discontinued ASE programs, and gather information from each site to address the objectives described above. Key personnel in the existing programs will be surveyed via mailed questionnaire with possible follow-ups by e-mail, phone or in person. This survey is expected to provide data relevant to ASE development and delivery that may affect the level of public acceptance for speed camera programs, as well as their success. The variables to be addressed include specific target sites for the ASE (school zones, work zones, *etc.*), program funding and revenue flow (who pays for it and how, who profits from revenue, how it is promoted as a revenue generator or a safety measure), nature of citations issued (cite vehicle or cite driver), penalties for violations (level of fines, points on license, *etc.*), presence of other automated enforcement (red light cameras), level of traditional speed law enforcement, existence and results of program evaluations, media reports and level of media exposure, level of public acceptance, and the degree to which programs were set up and implemented according to NHTSA guidelines. This information is focused on achieving the greatest benefit in decreasing crashes and resulting injuries and fatalities, and providing informational support to States, localities, and law enforcement agencies that will aid them in their efforts to reduce traffic crashes. Given the widespread occurrence of speeding and the high toll in injuries and lives lost in speed-related crashes, as well as the high economic costs of speed-related crashes, this is a safety issue that demands attention.

Affected Public: This survey will target law enforcement agencies in the United States with ASE programs as well as agencies that recently discontinued ASE programs. A few key personnel from each of the agencies will be contacted to complete the survey on their ASE programs. This survey will include a mailed questionnaire and possible e-mail, telephone or in-person follow-up discussions, as needed, for the information collection. Participation will be voluntary. This is a census collection of information on existing ASE programs and some recently discontinued ASE programs. After continued research into the number of current and discontinued ASE programs, the original estimate of 80 jurisdictions has been updated to include a total census of 106 agencies to be contacted for participation in this survey.

Estimated Total Annual Burden: The total estimated annual burden is approximately 848 hours for the survey and follow-up contacts for the 106 jurisdictions. We estimate approximately 8 hours per jurisdiction responding to our request for information (106 agencies × 8 hours each = 848 hours total). These 8 hours will be expended on internal agency discussion of the survey, gathering information requested in the survey (data and past reports), completing the questionnaire, and speaking with the researchers should follow-up contacts be required. Personnel to be contacted in each jurisdiction include the Chief of Police, a traffic unit/ASE unit

commander, and a data person at each agency. The respondents would not incur any reporting cost from the information collection beyond the time to respond to the information request and they would not incur any record keeping burden or record keeping cost from the information collection.

Comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2011–11784 Filed 5–12–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of establishment of the Federal Advisory Committee on Insurance (FACI) and solicitation of applications for committee membership.

SUMMARY: The Treasury Department has determined that it is in the public interest to establish the Federal Advisory Committee on Insurance. A Charter for the Committee has been prepared and will be filed no earlier than 15 days following the date of publication of this notice. This notice establishes criteria and procedures for the selection of members.

FOR FURTHER INFORMATION CONTACT: C. Christopher Ledoux, Federal Insurance Office, Department of Treasury (202) 622–6813.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. App. 2 § 1–16, as amended), the Treasury Department intends to establish the following advisory committee, pursuant to its Charter:

Title: The Federal Advisory Committee on Insurance (FACI)

Purpose: The purpose of the Committee is to present advice and recommendations to the Federal Insurance Office (FIO) to assist the Office in carrying out its duties and authorities. The FIO will benefit from the knowledge and regulatory experience of the State and Tribal insurance regulators, who are the functional regulators of insurance, as well as the experience and perspective of industry experts and others.

Statement of Public Interest: It is in the public interest to establish, under the provisions of the Federal Advisory Committee Act, the Federal Advisory Committee on Insurance (FACI). The FACI shall be a continuing advisory committee with an initial two-year term, subject to two-year re-authorizations. The Committee will provide a critical forum for State and Tribal insurance regulators and/or officials, distinguished members of the property and casualty insurance industry, the life insurance industry, the reinsurance industry, the agent and broker community, academics, and consumers. These views will be offered directly to the Director of the FIO on a regular basis. There exists no other source within the Federal government that could serve this function.

Background

The FACI has been formed by the authority under 31 U.S.C. 313(h) which authorizes the Secretary of the Treasury to issue orders, regulations, policies, and procedures to implement the FIO. In addition, the authorities of the FIO are carried out pursuant to the direction of the Secretary of the Treasury.

The FIO was established in Subpart A of the Federal Insurance Office Act of 2010 ((31 U.S.C. 313, *et seq.*), Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 12 U.S.C. 5301 *et seq.* (July 21, 2010)). The FIO's authorities extend to all lines of insurance except health insurance, long-term care insurance (except that which is included with life or annuity insurance components), and crop insurance. Generally, the duties and the authorities of the FIO are:

—The FIO advises the Secretary of the Treasury on major domestic and prudential international insurance policy issues.

—The FIO Director serves as a non-voting member of the FSOC in an advisory capacity. The FIO has the authority to recommend to the FSOC that FSOC designate an insurer (including affiliates) to be an entity subject to regulation as a nonbank financial company supervised by the Board of Governors of the Federal Reserve.

—The FIO monitors all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the U.S. financial system.

—The Director also plays a role in authorizing the resolution of any insurance companies subject to regulation as a nonbank financial company.

—The FIO coordinates and develops Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity), and assisting the Secretary (with the United States Trade Representative) in negotiating certain written bilateral or multilateral agreements regarding prudential insurance measures with respect to the business of insurance or reinsurance. The Office assists the Director in determining whether State insurance measures are preempted by such agreement or agreements.

—The FIO monitors the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance.

—The FIO assists the Secretary of the Treasury and other officials in administering the Terrorism Risk Insurance Program.

—The FIO also performs such other related duties and authorities as may be assigned to it by the Secretary of the Treasury.

—In carrying out these functions, the Office may receive and collect data and information on and from the insurance industry and insurers; enter into information-sharing agreements; analyze and disseminate data and information; and issue reports regarding all lines of insurance except health insurance.

Objective, Scope and Description of the Committee

The Committee will advise the FIO on issues related to the responsibilities of the office.

The FACI shall provide its advice, recommendations, analysis, and information directly to the FIO. The FIO

may share the FACI's advice and recommendations with the Secretary of the Treasury or other Treasury officials. The FIO will share information with the FACI as the Director determines will be helpful in allowing the FACI to carry out its role. Members will be selected by the Department from persons with expertise in the area of insurance. Members will be appointed to serve a two-year term. Members will be drawn from State and Tribal insurance regulators and/or officials, industry experts, and others who possess relevant expertise and/or who are familiar with or representative of affected constituencies.

Appointments will be made with the objective of creating a diverse and balanced body with a variety of interests, backgrounds, and viewpoints represented. The FACI shall consist of not more than 15 members.

The Committee will be chaired by a member selected by the FIO and Treasury officials.

The Committee will function for a two-year period before renewal or termination. It will meet periodically, generally four times per year, in Washington, DC.

The meetings are open to public observers, including the press, unless prior notice has been provided for a closed meeting.

No person who is a Federally-registered lobbyist may serve on an advisory committee. Membership on the Committee is personal to the appointee. Regular attendance is essential to the effective operation of the Committee.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a cover letter describing their interest, reasons for application, and qualifications, and should enclose a complete professional biography or resume.

Some members of the FACI may be required to adhere to the conflict of interest rules applicable to Special Government Employees as such employees are defined in 18 U.S.C. section 202(a). These rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

In accordance with Department of Treasury Directive 21–03, a clearance process including, fingerprints, annual tax checks, and a Federal Bureau of Investigation criminal check. Applicants must state in their application that they agree to submit to these pre-appointment checks.

The application period for interested candidates will extend to May 31, 2011.

Applications should be submitted in sufficient time to be received by the close of business on the closing date and be addressed to e-mail address *conrad.ledoux@treasury.gov* or by mail to: The Federal Insurance Office, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220–0002, *Attention:* FACI.

Dated: May 4, 2011.

Jeffrey A. Goldstein,

Under Secretary for Domestic Finance.

[FR Doc. 2011–11857 Filed 5–12–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Coastal Bank, Cocoa Beach, Florida; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Coastal Bank, Cocoa Beach, Florida, (OTS No. 15445) on May 6, 2011.

Dated: May 10, 2011.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2011–11778 Filed 5–12–11; 8:45 am]

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Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571
Federal Motor Vehicle Safety Standards; Motorcycle Helmets; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0050]

RIN 2127–AK15

Federal Motor Vehicle Safety Standards; Motorcycle Helmets

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

ACTION: Final rule.

SUMMARY: This final rule amends the Federal motor vehicle safety standard that specifies performance requirements for motorcycle helmets to reduce traumatic brain injury and other types of head injury. Some of the amendments will help to increase the benefits of that standard by making it easier for State and local law enforcement officials to enforce State laws requiring the use of helmets meeting that standard. Some motorcyclists use noncompliant helmets known as novelty helmets. These helmets are not certified to the agency's helmet standard and have been shown in testing to fail all or almost all of the safety performance requirements in that standard. Some novelty helmet users attempt to make their helmets appear to law enforcement agencies and the courts to be compliant by misleadingly attaching labels that have the appearance of legitimate "DOT" certification labels. This final rule revises the existing requirements for the "DOT" certification label and other labels and adds new requirements to make it more difficult to label novelty helmets misleadingly.

The other amendments will aid NHTSA in enforcing the standard by setting reasonable tolerances for certain test conditions, devices and procedures. Specifically, this final rule sets a quasi-static load application rate for the helmet retention system; revises the impact attenuation test by specifying test velocity and tolerance limits and removing the drop height test specification; provides tolerances for the helmet conditioning specifications and drop assembly weights; and revises requirements related to size labeling and location of the DOT symbol.

DATES: The final rule is effective May 13, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 13, 2013.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by June 27, 2011.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section V; Rulemaking Analyses and Notices) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Shashi Kuppa, Office of Crashworthiness Standards (Telephone: 202–366–6206) (Fax: 202–366–7002). For legal issues, you may call Mr. Steve Wood, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820). You may send mail to both of these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

a. Background

The National Highway Traffic Safety Administration (NHTSA) is very concerned about the sharp and steady increases in injuries and fatalities among motorcyclists that occurred prior to the current recession. Beginning with 1998, motorcycle rider fatalities increased every year through 2008. They more than doubled, according to the Fatality Analysis Reporting System (FARS), from 2,116 deaths in 1997 to 5,290 deaths in 2008.[1] These increases are all the more significant because the total number of deaths involving all types of motor vehicle occupants remained fairly unchanging during most of that time and then began declining in 2007.

This means that motorcycle occupant deaths were also steadily increasing as a percentage of all motor vehicle occupant deaths. In 2008, motorcycle fatalities accounted for 14 percent of all traffic fatalities.[2] This total is particularly concerning given the fact that motorcycles make up less than 3 percent of all registered vehicles in the United States, and account for only 0.4 percent of all vehicle miles traveled.[3]

Over the past decade, the age group with the largest increase in motorcyclist fatalities (from 760 in 1998 to 2,687 in 2008) was not the under 21 age group, the only group covered by the motorcycle helmet use laws of many states, but the 40-and-older age group.[4] The 40-and-older age group accounted for half of the total motorcycle fatalities in the United States that year.

While 2009 FARS data indicate that deaths among motorcyclists and other categories of highway users decreased in 2009, the agency is concerned that the current death toll remains far above the level in 1997. Further, the 2009 reductions seem likely in large measure to be temporary as they coincide with the current recession with its attendant heightened levels of unemployment.[5]

To reduce motorcyclist deaths from traumatic brain injury and other types of head injury, NHTSA long ago (1973) issued Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle helmets." This standard specifies performance (*e.g.,* energy attenuation, penetration resistance, and retention system (chin strap) structural integrity) and labeling requirements for on-road motorcycle helmets. The safety value of those requirements is shown by NHTSA's research finding that wearing a helmet certified as conforming to the FMVSS No. 218 reduces the risk of dying in a motorcycle crash by 37 percent.[6]

However, not all of the helmets worn by motorcycle riders are FMVSS No. 218-compliant. NHTSA estimates that a significant portion[7] of riders wear so-called "novelty" helmets when riding, despite warnings that those helmets are not safe for on-road use. When NHTSA tested these novelty helmets under FMVSS No. 218, the agency found that they failed all or almost all of the safety performance requirements in the standard.[8] Based on these tests, the agency concluded that novelty helmets will not protect motorcycle riders during a crash from either impact or penetration threats, and will not likely be retained on motorcycle riders' heads during crashes.

Some sellers and users of novelty helmets take advantage of the very simple design of the current certification label, which merely bears the letters "DOT," to create the superficial appearance of a FMVSS No. 218-compliant helmet. Various individuals and organizations sell or distribute labels bearing the letters "D.O.T.," claiming that those letters stand for something other than "Department of Transportation" and that the labels only coincidentally closely resemble legitimate certification labels. Examples of online sellers of these misleading labels can readily be found through Internet searches. People who obtain these labels can simply attach them to their novelty helmets to create the appearance of compliant helmets. As a result, they impair the ability of State and local law enforcement officials to establish probable cause for stopping motorcyclists and to prove violations of their State motorcycle helmet use laws.

On October 2, 2008,[9] NHTSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing to amend FMVSS No. 218 to address these and other issues. The notice proposed several changes to encourage the use of compliant helmets, require more informative certification labels (thereby making the production of misleadingly similar labels more difficult), and improve testing procedures for better enforcement of the performance requirements.

Specifically, we proposed enhancements to the certification label (attached to the helmet exterior), such as including the manufacturer's name, the

[1] See Final Regulatory Evaluation (FRE), which is in the docket for this rulemaking action.

[2] "Determining Estimates of Lives and Costs Saved by Motorcycle Helmets," Traffic Safety Facts Research Note March 2011 DOT HS 811 433, available at *http://www-nrd.nhtsa.dot.gov/Pubs/811433.pdf.* (Last accessed March 16, 2011).

[3] Ibid.

[4] Ibid.

[5] Longthorne, Anders, Subramanian, Rajesh and Chen, Chou-Lin, "An Analysis of the Significant Decline in Motor Vehicle Traffic Fatalities in 2008," pp. 1–2 and 15–17, DOT HS 811 346 June 2010. Available at *http://www-nrd.nhtsa.dot.gov/Pubs/811346.pdf:*

In the past, similar significant declines in fatalities were seen during the early 1980s and the early 1990s. Both of these periods coincided with significant economic recessions in the United States. During both these time periods, fatalities in crashes involving younger drivers (16 to 24) declined significantly as compared to drivers in the other, older age groups. Both of these periods of traffic fatality decline were followed by periods of increasing fatalities and the magnitude of the increase was the greatest in crashes involving the younger drivers. This trend was also observed in multiple-vehicle fatal crashes. However, during each period of increase following a period of decline, the annual fatality counts did not rise back to the level they were at prior to the decline.

Pp. 1–2.

[6] Motorcycle Helmet Effectiveness Revisited, March 2004, DOT HS 809 715, Technical Report, National Center for Statistics and Analysis, NHTSA.

[7] In 2010, 54 percent of motorcyclists wore a FMVSS No. 218-compliant helmet, 14 percent wore novelty helmets, and 32 percent wore no helmet at all. These figures represent a significant reduction in FMVSS No. 218-compliant helmet use compared to 2009 when the comparable figures were 67 percent, 9 percent and 24 percent. (2010 figures from "Motorcycle Helmet Use in 2010—Overall Results," Traffic Safety Facts Research Note December 2010 DOT HS 811 419, available at *http://www-nrd.nhtsa.dot.gov/Pubs/811419.pdf.* 2009 figures from Traffic Safety Facts Research Note December 2010 DOT HS 811 254, available at *http://www-nrd.nhtsa.dot.gov/Pubs/811254.pdf.*) This reduction in FMVSS No. 218-compliant helmet use is especially significant in the jurisdictions (20 States and the District of Columbia) with universal helmet use laws where the use of compliant helmets dropped from 86 percent in 2009 to 76 percent in 2010 and the use of novelty helmets increased from 11 percent in 2009 to 22 percent in 2010. This 11 percentage point increase in novelty helmet use in jurisdictions with universal helmet use laws between 2009 and 2010 is evidence of the difficulty encountered by law enforcement officials in enforcing helmet use laws.

[8] "Summary of Novelty Helmet Performance Testing," Traffic Safety Facts Research Note, April 2007 DOT HS 810 752. Available at *http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Studies%20&%20Reports/Associated%20Files/Novelty_Helmets_TSF.pdf.*

[9] 73 FR 57297, Docket NHTSA–2008–0157.

model number, and the term "certified" on the label, to make more difficult protestations of innocent intent in producing, selling and attaching labels that misleadingly resemble legitimate certification labels. We also proposed that a clear coating be applied over the certification label. We proposed that information on the discrete size of the helmet, as opposed to a simple general size designation such as "small" or "large," be included on the information and instruction label (typically attached to the helmet interior). Finally, we also proposed slight changes to some of the test specifications in order to aid NHTSA's enforcement efforts.

b. Summary of Final Rule and Differences Between Final Rule and NPRM

After having considered the more than 160 public comments on the NPRM, the agency is publishing this final rule. It adopts many of the proposals in the NPRM, with some differences. As the NPRM proposed, the final rule will:

- Require an enhanced certification label, which will bear the manufacturer's name and helmet model, as well as the word "Certified." [10] We believe that this will discourage the production, sale and attachment of labels that misleadingly resemble legitimate certification labels and thereby facilitate the enforcement of State helmet use laws. This effect will be strengthened if the States make it clear that their requirements to use helmets that comply with Standard No. 218 include the requirement that the helmets bear a label affixed by the helmet manufacturer. This effect will be further strengthened if the States decide that, at some appropriate point in the future after the implementation of the new certification label requirements, only helmets bearing the new certification labels will be considered compliant.
- Permit the certification label to be located on the helmet exterior between 1 and 3 inches (2.5 to 7.6 centimeters (cm)) from the lower rear edge of the helmet, instead of the current limit of between 1⅛–1⅜ inches (2.9–3.5 cm), increasing manufacturer flexibility in label placement.
- Require that the size label state the helmet size in discrete, numerical terms, instead of generally stating that the helmet is "small," "medium," or "large," for example.
- Amend the test procedure for the retention system by specifying a load application rate of 0.4 to 1.2 inches per minute (1–3 cm per minute), and recharacterizing it as a quasi-static test, instead of a static test. Specifying the application rate will aid enforceability of the standard.
- Amend the impact attenuation test by specifying a test velocity and tolerance limits to the test velocity (although the final tolerances have been altered from those proposed in the NPRM) and removing the drop height specification, which is not needed given the new specifications.
- Define "impact site" and clarify the meaning of "identical impacts" for the impact attenuation tests.
- Adopt helmet conditioning tolerances (although one of the final tolerances has been altered from that proposed in the NPRM).
- Update the reference to Society of Automotive Engineers (SAE) Recommended Practice J211, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation," to use a more current version, as well as fix a clerical error where Figures 7 and 8 were inadvertently swapped.

While NHTSA has made some changes to what it proposed in the NPRM, we believe that these changes are relatively minor, and note that they were made in response to reasoned arguments in the comments. The most significant differences between the NPRM and the final rule involve the labeling requirement.

As one measure to discourage the producing and attaching of labels that misleadingly resemble legitimate certification labels, the agency had proposed requiring the application of a clear coating to the exterior shell of a FMVSS No. 218-compliant helmet after the manufacturer attached a valid certification label to it. The agency believed that such a measure would make it more difficult for a non-manufacturer to attach a label that misleadingly resembles a certification label to a novelty helmet and attempt to pass the helmet off as a compliant helmet.

However, commenters responded to the clear coating proposal with three counter-arguments that the agency found convincing. First, commenters stated that such a requirement would not pose a significant obstacle to attaching a misleading label since a post-manufacture clear coat could be readily applied to most helmets by anyone. Second, commenters stated that a clear coating requirement was incompatible with certain helmet designs, including those with matte finishes or cloth or leather exteriors. Third and finally, the commenters submitted information indicating that many helmets with solid exterior colors such as white, red, and yellow, are not manufactured with clear coating. Requiring clear coating for these helmets would cost significantly more than the agency originally believed ($0.60 to $1.00 per helmet compared to the $0.02 that the agency estimated). The agency found merit in these arguments and accordingly has not included the clear coat requirement for any helmets in the final rule. Nonetheless, we believe that the requirements we have adopted for improved labeling will help to deter the attaching of misleading labels to helmets even without the adoption of the clear coat proposal.

Other differences between the NPRM and final rule are listed below, and are explained in detail in the later sections of this preamble:

- In response to comments, the final rule adds the term "FMVSS No. 218" between "DOT" and "Certified" on the certification label. The addition clarifies that what is being certified is a helmet's compliance with the standard.
- The final rule modifies the proposed definition of "impact site" for the anvil test as the point on the helmet where the falling helmet shell first contacts the test anvil during the impact attenuation test. We believe that this change will reduce any current potential for misinterpretation of the test requirements.
- This final rule narrows the specified velocity tolerance ranges for the impact attenuation tests in response to comments. The final values are 16.4 feet/second (ft/s) to 17.7 ft/s (5.0 to 5.4 meters/second (m/s)) on the hemispherical anvil, and 19.0 ft/s to 20.3 ft/s (5.8 to 6.2 m/s) on the flat anvil (a tolerance of ± 7.9 inch/second (in/s) (± 0.2 m/s) for each test). Several commenters argued that the proposed tolerance levels of 15.8 in/s (0.4 m/s) resulted in potentially up to 30 percent energy variation, which could cause some helmets to fail the impact attenuation requirements. The final tolerance levels permit much less variation, but are still within the capability limits of common test equipment.
- The final rule adds a test tolerance of ± 0.22 pound (lb) (± 0.1 kilogram (kg)) for the drop assembly weights for all headform sizes, as part of our efforts to improve test procedures. These tolerances will provide test laboratories with a slight measure of leeway on their headform weights and will aid

[10] As noted below, the final rule also adds the term "FMVSS No. 218" between "DOT" and "Certified" on the certification label.

enforceability of the standard. The final rule adds test tolerances for the penetration test parameters (drop height) and striker properties (striker mass, striker point included angle, cone height, and tip radius).

• The final rule also changes the ranges for helmet conditioning time, allowing helmets to be conditioned for periods of between 4 and 24 hours. It will also allow indefinite conditioning time for the ambient condition. These changes will allow helmets to be conditioned during normal business hours as well as prevent indefinite conditioning for non-ambient conditions.

NHTSA believes that the effect of these changes will be to improve significantly the enforceability of the helmet standard, specify clearer instructions for compliance laboratories, as well as help to reduce the number of novelty helmets being used by motorcycle riders. We believe that these changes will, in turn, increase the effectiveness of the standard and produce important safety benefits at marginal costs to legitimate, reputable helmet manufacturers, as summarized in the next section.

c. Estimated Benefits and Costs

The benefits and costs of the rule would depend on how many motorcycle riders will change from using novelty helmets to FMVSS No. 218-certified helmets. Behavior change among motorcycle riders as a result of the rule is difficult to predict. However, the agency believes that 5 to 10 percent of the novelty helmet users in States that have a universal helmet use law would make a switch, and that this is a modest and achievable projection. Therefore, the agency estimated benefits and costs of the rule for the 5 and 10 percent projected switch from novelty helmet to compliant helmet use.

The total equivalent lives saved ranges from a low estimate of 22 lives (scenario where 5 percent of the riders convert from novelty helmets to compliant helmet use) to a high estimate of 75 lives (scenario where 10 percent of the riders convert from novelty helmets to compliant helmet use). The costs come from two sources—the direct increased costs of labeling for manufacturers due to the improved certification label requirements, and the indirect cost to motorcyclists, in States with helmet use laws, of replacing a novelty helmet with a FMVSS No. 218-compliant motorcycle helmet.

We believe that the additional labeling costs are extremely low. We estimate the marginal cost difference between the old certification labels and the new ones to be approximately 2 cents per helmet. As approximately 5.2 million helmets are sold annually, we expect the industry-wide effect of this increase to be $0.1 million.

A greater cost will be incurred if a motorcycle rider, as a result of this rule, discards a novelty helmet and purchases a new FMVSS No. 218-compliant helmet. We estimate the average difference in cost between a new compliant helmet and a new novelty helmet to be $46.02. The total costs range from $2.2 million (if 5 percent of these riders convert to compliant helmets) to $4.3 million (if 10 percent convert). The commonly-used metric of net costs per equivalent life saved (NCELS) ranges from $63,763 to $130,586 for the scenario when 5 to 10 percent of the riders convert to compliant helmets. These figures are very low compared to the figure of $6.31 million currently used by the agency to justify issuance of a rule.

II. Background and Notice of Proposed Rulemaking

a. Background

1. Motorcycle Fatalities

A. There Were 11 Consecutive Years of Motorcycle Fatality Increases Beginning in 1998

There is a pressing need for improvements in motorcycle safety. For eleven straight years, from 1998 through 2008, motorcycle rider fatalities increased every year. Fatalities more than doubled in that time, according to FARS, from 2,116 deaths in 1997 to 5,290 deaths in 2008. In 2006, motorcycle rider fatalities exceeded the number of pedestrian fatalities for the first time since NHTSA began collecting fatal motor vehicle crash data in 1975, and in 2009 accounted for 13 percent of all annual motor vehicle fatalities.

A number of explanations have been offered for the steady increase from 1998 through 2008, including increases in motorcycle sales, increases in the percentage of older riders, and increases in engine size. However, as shown in research by NHTSA's National Center for Statistics and Analysis (NCSA) [11] and discussed in the Final Regulatory Evaluation (FRE), the increase in the number of deaths resulting from motorcycle crashes has been disproportionately large and fast compared to the increases in the number of motorcycles on the road and the distance they are driven. In 2007, motorcycles accounted for only about 3 percent of all registered vehicles and 0.4 percent of all vehicle miles traveled (VMT), but accounted for 14 percent of all traffic crash fatalities in 2008, compared to 5 percent in 1997. This represents a significant increase in their proportion of the annual loss of life in traffic crashes. In recent years, fatality rates for motorcycle riders have increased faster than the increase in motorcycle exposure (VMT on motorcycles as well as the number of registered motorcycles). The number of fatalities per 100 million VMT on motorcycles has almost doubled, increasing from 21 in 1997 to 38 in 2007.[12] Similarly, the number of fatalities per 100,000 registered motorcycles increased from 59 in 1998 to 72 in 2007. Compared with a passenger car occupant, a motorcycle rider is 37 times more likely to die in a crash and 9 times more likely to be injured, based on VMT.[13]

The National Transportation Safety Board (NTSB) has also made a similar assessment of the motorcycle safety problem. The assessment appeared in a safety alert, "Motorcycle Deaths Remain High," issued in November 2010, and included the following findings:[14]

• Deaths from motorcycle crashes have more than doubled in the past 10 years—from 2,294 in 1998 to 5,290 in 2008—an alarming trend. Another 96,000 people were injured in motorcycle crashes in 2008.

• The yearly number of motorcycle deaths is more than double the annual total number of people killed in all aviation, rail, marine and pipeline accidents combined.

• Head injuries are a leading cause of death in motorcycle crashes.

B. There Were Sharp Decreases in 2009 in All Categories of Motor Vehicle Fatalities, Including Motorcycle Fatalities

In 2009, overall traffic fatalities fell by almost 10 percent compared to 2008. Occupant fatalities fell by 11 percent in passenger cars, almost 5 percent in light trucks, 26 percent in large trucks and 16 percent on motorcycles. In addition, fatalities fell by 7.3 percent for pedestrians and 12 percent for pedalcylists.

[11] Traffic Safety Facts, 2008 Data—Motorcycles, DOT HS 811 159, National Center for Statistics and Analysis, NHTSA.

[12] The Federal Highway Administration (FHWA) recognizes the need to improve the accuracy of their VMT estimate for motorcycles and is currently implementing new requirements for motorcycle VMT data.

[13] Traffic Safety Facts, 2008 Data—Motorcycles, DOT HS 811 159.

[14] Available at *http://www.ntsb.gov/alerts/SA_012.pdf.*

C. Motorcycle Training Is an Unlikely Cause for the Sudden Decline in Motorcycle Fatalities

Some commenters suggested that motorcyclist training produced the decline. This explanation for the decline seems highly questionable. As explained below in the discussion of NHTSA's comprehensive motorcycle safety plan, the results of studies of such training are mixed as to whether the training has any measurable effect on fatalities. In addition, even if the results were not mixed and instead uniformly demonstrated that training had a significant effect on fatalities, there is no indication that there has been a recent substantial increase in the number of trained motorcyclists that could explain the sudden significant decline in motorcycle fatalities.

D. The 2009 Fatalities Decreases Coincided With the Current Recession

The more likely explanation can be found in the fact that the relatively sudden, significant and almost across-the-board declines in all categories of traffic fatalities coincide with the current recession.[15]

E. The Two Other Sharp Decreases in Motor Vehicle Fatalities in the Last 35 Years Also Coincided With Recessions and Were Mostly Temporary

There have been three periods, including the current one, since the early 1970's in which there were the most significant across-the-board declines in overall traffic fatalities. The declines coincided with the three most significant recessions since the early 1970's. After the first and second recessions, the overall number of fatalities rebounded to nearly the pre-recession levels. The agency anticipates that fatalities will likewise rebound this time. Thus, the agency remains concerned about the trend in motorcycle death totals in future years.

F. Regardless of the 2009 Decreases and the Reasons for Those Decreases, Motorcycle Fatalities Remain Far Above the 1997 Levels

The essential facts are that motorcycle fatalities remain far above the 1997 levels and that use of motorcycle helmets is the single most effective way of preventing motorcyclist fatalities.

2. Motorcyclist Head Injuries

The main function of motorcycle helmets is to reduce injuries to the head and, especially, the brain. Brain injury is more likely to result in expensive and long-lasting treatment, sometimes resulting in lifelong disability, while other head injuries, concussions and skull fractures (without damage to the brain itself), are more likely to result in full recovery.[16]

3. NHTSA's Comprehensive Motorcycle Safety Plan and the Indispensable Role Played by Helmet Use

A. Haddon Matrix and Motorcycle Safety Program Planning

NHTSA's comprehensive motorcycle safety program[17] seeks to: (1) Prevent motorcycle crashes; (2) mitigate rider injury when crashes do occur; and (3) provide rapid and appropriate emergency medical services response and better treatment for crash victims. As shown in Table 1 below, the elements of the problem of motorcycle fatalities and injuries and the initiatives for addressing them can be systematically organized using the Haddon Matrix, a paradigm used for systematically identifying opportunities for preventing, mitigating and treating particular sources of injury. As adapted for use in addressing motor vehicle injuries, the matrix is composed of the three time phases of a crash event (I-Crash Prevention—Pre-Crash, II-Injury Mitigation—During a Crash, and III-Emergency Response—Post-Crash), along with the three areas influencing each phase (A-Human Factors, B-Vehicle Role, and C-Environmental Conditions).

Effectively addressing motorcyclist head injuries or any other motor vehicle safety problem requires a multi-pronged, coordinated program in all of the areas of the Haddon matrix, as shown in Table 1. As no measure in any of the nine areas is a panacea or even remotely approaches being one, the implementation of a measure in one area does not eliminate or reduce the need to implement measures in the other areas.

B. Training's Place in the Matrix; Not a Substitute for Helmet Use

For example, while NHTSA encourages efforts in all areas of the motorcycle safety matrix below, including the offering of training for motorcyclists, such training cannot substitute for the wearing of helmets complying with FMVSS No. 218. This is particularly true because the results of studies regarding the effectiveness of such training in actually reducing crash involvement are, at best, mixed.[18] To use an example more closely related to the experiences of most people who travel on the Nation's roadways, arguing that taking a motorcycle operating course eliminates the need for using motorcycle helmets is akin to arguing that taking a driver's education course for driving a passenger vehicle eliminates the need for people to use seat belts or to place children in safety seats or even for vehicle manufacturers to install seat belts, air bags, padding and other safety equipment and features in motor vehicles.

TABLE 1—NHTSA'S MOTORCYCLE SAFETY PROGRAM[19]

	A-Human factors	B-Vehicle role	C-Environmental conditions
I-Crash Prevention (Pre-Crash)	• Rider Education & Licensing. • Impaired Riding. • Motorist Awareness. • State Safety Program.	• Brakes, Tires, & Controls. • Lighting & Visibility. • Compliance Testing & Investigations.	• *Roadway Design, Construction, Operations & Preservation.* • *Roadway Maintenance.* • Training for Law Enforcement.

[15] Longthorne, Anders, Subramanian, Rajesh and Chen, Chou-Lin, "An Analysis of the Significant Decline in Motor Vehicle Traffic Fatalities in 2008," DOT HS 811 346 June 2010. Available at *http://www-nrd.nhtsa.dot.gov/Pubs/811346.pdf.*

[16] NHTSA, Benefits of Safety Belts and Motorcycle Helmets, Report to Congress, February 1996.

[17] The program can be found at *http://www.nhtsa.gov/DOT/NHTSA/Communication%20&%20Consumer%20Information/Articles/Associated%20Files/4640-report2.pdf.* See also Countermeasures that Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices, Fifth Edition, pp. 5–1 through 5–28, DOT HS 811 258, January 2010.

[18] Office of Behavioral Safety Research, National Highway Traffic Safety Administration, Approaches to the Assessment of Entry-Level Motorcycle Training: An Expert Panel Discussion, DOT HS 811 242, March 2010. *http://www.nhtsa.gov/staticfiles/nti/motorcycles/pdf/811242.pdf.* The report concluded:

While basic rider courses teach important skills, the effectiveness of training as a safety countermeasure to reduce motorcycle crashes is unclear. Studies conducted in the United States and abroad to evaluate rider training have found mixed evidence for the effect of rider training on motorcycle crashes.

[19] Activities shown in italics are either implemented jointly with, or conducted by, the Federal Highway Administration.

TABLE 1—NHTSA'S MOTORCYCLE SAFETY PROGRAM [19]—Continued

	A-Human factors	B-Vehicle role	C-Environmental conditions
II-Injury Mitigation (Crash)	• Use of Protective Gear.	• Occupant Protection.	• *Roadway Design, Construction, & Preservation.*
III-Emergency Response (Post-Crash).	• Automatic Crash Notification.	• Education & Assistance to EMS. • Bystander Care. • Data collection & analysis.	

C. Key Contributions by Helmets

Mitigating rider injury in crashes through the use of motorcycle helmets is a highly effective measure for improving motorcycle safety. The steadily increasing toll of motorcyclist fatalities would have been significantly lower had all motorcyclists been wearing motorcycle helmets that meet the performance requirements issued by this agency. In potentially fatal crashes, helmets have an overall effectiveness of 37 percent in preventing fatalities.[20] Based on the data for 2008, the agency estimates that helmets saved 1,829 lives in that year. If there had been 100 percent helmet use among motorcycle riders, an additional 823 lives could have been saved that year.[21]

Again, in its November 2010 Safety Alert, the NTSB came to similar conclusions about the value in increasing the use of helmets that comply with FMVSS No. 218:

• DOT-compliant helmets are extremely effective. They can prevent injury and death from motorcycle crashes.

• If you are in a crash without a helmet, you are three times more likely to have brain injuries.

• Wearing a helmet reduces the overall risk of dying in a crash by 37%.

• In addition to preventing fatalities, helmets reduce the need for ambulance service, hospitalization, intensive care, rehabilitation, and long-term care.

• Wearing a helmet does not increase the risk of other types of injury.

The value of helmet use can be demonstrated in other ways. Data from the agency's Fatality Analysis Reporting System (FARS) for the period 1995–2004 also show the importance of motorcycle helmet use. Even though the percentage of riders who use motorcycle helmets is larger than the percentage of riders who do not, non-users suffer more fatal head injuries. For example, from 2000 to 2002, an average of 35 percent of helmeted riders who died suffered a head injury, while an average of 51 percent of the non-users who died suffered a head injury.[22]

D. Motorcyclists Who Either Wear Noncompliant Helmets or Do Not Wear Any Helmet

Unfortunately, a significant percentage of motorcyclists either wear noncompliant helmets or do not wear any helmet at all. In 2009, 20 States and the District of Columbia had universal helmet use laws, *i.e.,* ones requiring all motorcyclists to wear helmets. In those 21 jurisdictions, FMVSS No. 218-compliant helmets were used by 86 percent of motorcyclists; noncompliant helmets were used by 11 percent of motorcyclists; and no helmets were used by an estimated 3 percent of motorcyclists. Comparatively, in the 30 States with partial [23] or no helmet use laws, only 55 percent of motorcyclists used FMVSS No. 218-compliant helmets; 8 percent used noncompliant helmets; and 37 percent did not use a helmet at all.[24] These data are presented below in tabular form:

TABLE 2—MOTORCYCLE HELMET USE RATES IN 2009

Motorcyclists	States with a universal helmet use law	States with partial or no helmet use law
Percentage using FMVSS No. 218-compliant helmets	86	55
Percentage using noncompliant helmets	11	8
Percentage not using any helmet	3	37

In 2010, these figures changed significantly for the worse.[25]

TABLE 3—MOTORCYCLE HELMET USE RATES IN 2010

Motorcyclists	States with a universal helmet Uue law	States with partial or no helmet use law
Percentage using FMVSS No. 218-compliant helmets	76	40
Percentage using noncompliant helmets	22	8

[20] "Motorcycle Helmet Effectiveness Revisited, March 2004, DOT HS 809 715, Technical Report, National Center for Statistics and Analysis, NHTSA.

[21] Ibid.

[22] Rajesh Subramanian, Technical Report: Crash Stats, Bodily Injury Locations in Fatally Injured Motorcycle Riders, National Center for Statistics & Analysis, National Highway Traffic Safety Administration, DOT HS 810 856, October 2007. Available at *http://www-nrd.nhtsa.dot.gov/Pubs/810856.pdf.*

[23] The partial laws typically require helmet use only by persons 17 years of age or younger, even though 70 percent of the teenagers killed on motorcycles are 18 or 19 years of age and even though teenagers of all ages account for only about 4.5 percent of all motorcycle fatalities. Insurance Institute for Highway Safety, Fatality Facts 2008, Teenagers. Available at *http://www.iihs.org/research/fatality_facts_2008/teenagers.html.*

[24] Motorcycle Helmet Use in 2009—Overall Results, Traffic Safety Facts Research Note, DOT HS 811 254.

[25] Motorcycle Helmet Use in 2010, Overall Results, Traffic Safety Facts Research Note, DOT HS 811 419.

TABLE 3—MOTORCYCLE HELMET USE RATES IN 2010—Continued

Motorcyclists	States with a universal helmet Uue law	States with partial or no helmet use law
Percentage not using any helmet	2	52

These data show that a considerable number of motorcyclists both in States with universal helmet use laws and States with partial or no helmet use laws are wearing noncompliant helmets. As briefly discussed immediately below and at greater length under "Enforceability Concerns," such helmets do not provide adequate protection.

The noncompliant helmets are commonly called "novelty" helmets. They are not designed or manufactured for highway use, and lack the strength, energy absorption capability, and size necessary to protect their users. They do not meet the safety requirements of FMVSS No. 218 and are not certified as doing so. In fact, recent compliance test data on novelty helmets showed that they failed all or almost all of the FMVSS No. 218 performance requirements.[26] Manufacturers of these helmets frequently make disclaimers that contend the helmets are not intended for protecting the persons who wear them from injury, despite the fact that helmets for all types of recreational activities (including sporting ones) generally have a protective purpose and the novelty helmets, labeling aside, likewise appear to have a protective purpose. These manufacturers further claim that the helmets are not intended for highway use, despite the fact that the helmets are predictably used precisely and primarily for that purpose. As the above tables show, a significant proportion of motorcyclists use novelty helmets on the highway, especially in states with universal helmet use laws.

3. Enforceability Concerns

This rulemaking seeks to increase the benefits of FMVSS No. 218 in two ways. The first way is improve the exterior certification label to reduce the attaching of labels that misleadingly resemble legitimate certification labels to novelty helmets and encourage more use of compliant helmets and assist State law enforcement officers in enforcing helmet use laws. The second is to add tolerances to the test conditions and procedures and clarify language in the standard. This will provide clear guidance to manufacturers for conducting compliance tests and will increase the ability of the agency to bring successful enforcement actions when a noncompliance is discovered.

A. Novelty Helmets and Enforcement of Helmet Use Laws

In order to reap the benefits of compliant helmets more fully, changes to the labeling requirements are needed to make it easier for State and local law enforcement officials to enforce State motorcycle helmet use laws against motorcyclists using novelty helmets. Novelty motorcycle helmets are not certified by their manufacturers as being compliant with FMVSS No. 218 and in fact offer the wearer little or no protection against injury.[27]

i. Are novelty helmets safe?

No. When NHTSA tested novelty helmets under FMVSS No. 218, the agency found that they failed all or almost all of the safety performance requirements in the standard.[28] Based on these tests, the agency concluded that novelty helmets will not protect motorcycle riders during a crash from either impact or penetration threats. Likewise, their chin straps are incapable of keeping the helmets on the heads of their users during crashes.

ii. How are novelty helmets used in an attempt to avoid being ticketed and fined for violating state requirements to wear a FMVSS No. 218-certified helmet?

Some motorcyclists who wear novelty helmets have been affixing labels bearing the symbol "DOT" to their helmets in order to create the misleading appearance of properly certified, compliant helmets.[29] These labels closely and not simply coincidently resemble the "DOT" certification symbol required by FMVSS No. 218. They can be readily purchased from stores selling novelty helmets or from online retailers. States report that when these motorcyclists are stopped by law enforcement officers, they falsely claim that the label was on their helmet when they bought it and that the label led them to believe that their helmet was certified to FMVSS No. 218. Other motorcyclists do not add a label that misleadingly resembles a legitimate "DOT" certification label to their novelty helmets and instead falsely claim they assumed that there must have been a legitimate certification label on the helmet originally and that that label must have fallen off or been removed by a prior owner.

The ability of novelty helmet users to attach inexpensive, easy-to-produce and easy-to-obtain labels having essentially the same appearance of legitimate certification labels has complicated the efforts of State and local law enforcement personnel to enforce requirements for the use of properly certified helmets. The availability and use of these labels make it difficult for law enforcement officials in States with helmet use laws to determine whether or not a rider is wearing a helmet certified to FMVSS No. 218. The misleading look-alike "DOT" labels make it difficult to prove that a motorcyclist is deliberately flouting helmet use laws by wearing a novelty helmet with a look-alike "DOT" label that falsely suggests the helmet is certified. More importantly, the use of noncompliant helmets puts motorcyclists at much greater risk of head injury or death in the event of a crash.

In some cases, the use of these look-alike labels has enabled motorcyclists either to assert successfully in court that he or she believed in good faith that the helmet he or she was using had been certified to the Federal standard and/or to put State authorities to the time and expense of conducting tests to prove that the helmet is noncompliant. Further, sellers and distributors of these labels, which bear the letters "DOT,"

[26] Summary of Novelty Helmet Performance Testing, Traffic Safety Facts Research Note, DOT HS 810 752.

[27] Compliance test data on novelty helmets showed that they failed almost all of the FMVSS No. 218 performance requirements. (Compliance test results can be found at *http://www-odi.nhtsa.dot.gov/tis/index.cfm*). In fact, in all tests performed by the Office of Vehicle Safety Compliance (OVSC), novelty helmets were found to be inadequate in offering their users even minimal protection during a crash.

[28] "Summary of Novelty Helmet Performance Testing," Traffic Safety Facts Research Note, April 2007 DOT HS 810 752. Available at *http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Studies%20&%20Reports/Associated%20Files/Novelty_Helmets_TSF.pdf.*

[29] Using the search term "DOT helmet labels" or "DOT helmet stickers," sellers of these labels can be readily found, for example, on eBay or via Google. Various Web sites also sell novelty helmets with a free DOT label.

attempt to avoid any responsibility for their sale and use. They assert that the labels are not counterfeit or misleading look-alike "certification" labels, but merely labels that coincidentally resemble legitimate "DOT" certification labels and whose letters stand for "Doing Our Thing," not "Department of Transportation." The agency notes its understanding that these look-alike labels appeared only after the implementation of FMVSS No. 218. As a result, application of these labels to noncompliant helmets enables motorcyclists to avoid conviction and penalties in situations in which State and local helmet laws require the use of a certified FMVSS No. 218-compliant motorcycle helmet.

In NHTSA's judgment, the mere presence of a "DOT" label on a helmet that otherwise lacks the construction and appearance of a FMVSS No. 218-compliant helmet cannot reasonably be thought to be indicative that the helmet is a compliant helmet. The plausibility of that indication is negated by the helmet's lack of the visible physical attributes [30] typically possessed by a compliant helmet. The presence of a label on such a helmet is instead actually indicative that the label is a misleading look-alike label applied by a helmet seller or user, not by its manufacturer.

In addition to the enforcement problems, improper use of the "DOT" symbol on noncomplying helmets has the additional undesirable effect of placing legitimate motorcycle helmet manufacturers that responsibly design, test, and certify their helmets to FMVSS No. 218 requirements at a financial competitive disadvantage. Novelty helmets are made of inferior materials and based on inferior designs. Further, they are not subjected by their manufacturers to any testing to assure a suitable level of safety performance.

B. Enforcement of FMVSS No. 218

The other main issue concerns the enforceability of determinations of noncompliance with the performance requirements in FMVSS No. 218. During fiscal year (FY) 2002 and 2003 compliance testing, the agency discovered ambiguities in the language of the impact attenuation test and the retention test when testing helmets manufactured by NexL Sports Products (NexL). NHTSA compliance testing indicated that NexL's helmets failed to meet the performance requirements of FMVSS No. 218 on helmet impact attenuation, penetration, and retention.

In its response to the agency's finding of noncompliance, NexL claimed that the agency's impact attenuation tests were invalid because the agency violated S7.1.4(b) of the standard by testing the helmets at velocities lower than the minimum required 19.7 ft/s (6 m/s). NHTSA found that the helmets did not comply with the impact attenuation requirements of FMVSS No. 218 during agency testing, which is typically conducted at speeds somewhat less than 19.7 ft/s. Because the impact attenuation test, as written, requires a minimum impact speed of 19.7 ft/s, the agency tentatively concluded that there was arguably merit of a technical, not substantive, nature to NexL's arguments [31] and that this language should therefore be clarified.

With regard to the retention test, NexL stated that it tested its helmets at the required static load condition, and that its testing did not result in any displacement failures. In its investigation, NHTSA found that NexL was able to achieve passing results by adjusting the load application rate of the test equipment until a passing displacement result (less than one inch, or 2.54 cm, of displacement) was achieved. In other words, by applying the required tensile load to the helmet at one rate, NexL was able to achieve a passing result, while in a similar test where the load was applied at a different rate, NHTSA results showed a noncompliance. Because the rate of application of the static load was unspecified in the standard, NHTSA decided not to undertake an enforcement action.

b. Notice of Proposed Rulemaking

1. Labeling Revisions to Reduce Misleading Labeling of Novelty Helmets

We proposed three requirements for helmet certification labeling: [32] (1) The application of a FMVSS No. 218 certification label to the helmet beneath a clear coating; (2) lettering on the label indicating the manufacturer's name and/or brand and the helmet model designation in the space above the "DOT" symbol; and (3) the word "certified" in a horizontally centered position beneath the "DOT" symbol on that label.

2. Size Labeling and Location of the "DOT" Certification Label

The agency proposed that helmets be labeled with a "discrete size," which would be used to select the appropriate headform for compliance testing purposes. In addition, the agency proposed that the required certification label on the exterior surface of helmets be positioned such that the horizontal centerline of the DOT symbol is located between one and three inches (2.5–7.6 cm) from the lower edge of the helmet.

3. Retention Test

The agency proposed specifying a load application rate for the retention test of 1.0 to 3.0 cm/min and reclassifying the test as a quasi-static test instead of the current static test.

4. Impact Attenuation Test

NHTSA proposed to specify test velocity and tolerance limits for the impact attenuation test. Specifically, we proposed that the test velocity be any speed between 15.7 ft/s to and including 18.4 ft/s (from 4.8 m/s to and including 5.6 m/s) for the impact on the hemispherical anvil, and any speed from 18.4 ft/s to and including 21.0 ft/s (from 5.6 m/s to and including 6.4 m/s) for the impact on the flat anvil. In addition, we proposed to remove the drop height requirement from the impact attenuation test.

5. Helmet Conditioning Tolerances

NHTSA proposed to set tolerances for the helmet conditioning procedures. For the ambient condition, the range was any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) and any relative humidity from 30 to and including 70 percent. For the low temperature condition, the range was any temperature from 5 °F to and including 23 °F (from −15 °C to and including −5 °C). For the high temperature condition, the range was any temperature from 113 °F to and including 131 °F (from 45 °C to and including 55 °C). For the water immersion test, the range for the water temperature was from 61 °F to and including 79 °F (from 16 °C to and including 26 °C). In addition, NHTSA proposed that the 12 hour duration be specified as a minimum duration.

[30] Examples of such attributes include adequate thickness and composition of the shock absorbing liner and the presence of the interior label required by FMVSS No. 218. Any layman can determine that a thick liner composed of easily compressed sponge rubber would have no protective value in a crash.

[31] If NexL's helmets fell short of the required level of performance in tests below 19.7 ft/s, they would almost certainly have fallen farther short of that level in tests at 19.7 ft/s, given that the difficulty of compliance increases as speed increases.

[32] There were some discrepancies between the proposals as described in the NPRM preamble and the proposals as set forth in the NPRM regulatory text. For example, the preamble stated that the agency was proposing that the certification label be a water decal and that it be placed under a clear coating. The regulatory text made no mention of a water decal. Also, the preamble proposed one set of tolerances for the water temperature specified in the water immersion procedure and the regulatory text set forth a slightly different set of tolerances.

III. The Final Rule and Responses to Comments

NHTSA received 162 comments in response to NPRM. Three international manufacturers of FMVSS No. 218-compliant motorcycle helmets provided comments: Shoei Co., Ltd (Shoei),[33] Arai Helmet, Limited (Arai),[34] and Shark Helmets (Shark).[35] The agency also received comments from the Motorcycle Industry Council (MIC),[36] a trade association representing manufacturers of, among other things, motorcycles and motorcycle parts and accessories, including many helmet distributors in the United States.

Various organizations with a focus on vehicle or helmet safety and enforcement submitted comments to the docket. One entity that provided extensive information is the Snell Memorial Foundation (Snell),[37] a not-for-profit organization that promotes the development, manufacture, and use of effective helmets for a variety of purposes. NHTSA also received comments from the Washington Association of Sheriffs and Police Chiefs (WASPC),[38] the Governors Highway Safety Association (GHSA),[39] the Insurance Institute for Highway Safety (IIHS),[40] and one independent governmental entity, the NTSB,[41] organizations which generally promote safety and law enforcement interests. The Motorcycle Riders Foundation (MRF),[42] an organization representing interests of some motorcycle riders, also submitted comments.

Finally, this rulemaking action elicited comments from a wide variety of individual commenters expressing personal or professional views, including some anonymous comments. People expressed a wide variety of thoughts to this agency, with many people praising the agency for its efforts to regulate motorcycle helmets, and others questioning the value of such efforts. Where individual comments are discussed in this document, a docket citation for the specific comment is provided.

The following sections address all of the issues raised by the various comments and the agency's response to each of them. While each comment is not discussed individually in this document, we have attempted to group many of the common ideas, questions, and arguments in the comments together and respond to issues as a whole where possible instead of each comment individually.

a. Certification Labeling

One of the central purposes of the proposal to update FMVSS No. 218 was to improve the exterior label in an attempt to reduce the number of motorcyclists who wear novelty helmets. We believe that fewer motorcyclists will use novelty helmets if it is harder to produce and obtain misleading look-alike "certification" labels, and thus harder for novelty helmet users to continue to claim falsely that their helmet bears a valid FMVSS No. 218 certification label and the helmet was sold to them as a FMVSS No. 218-compliant helmet. Further, we believe that improved labels can make it easier for law enforcement officers to identify novelty helmets on the road. Currently, due to the use by novelty helmet users of misleading look-alike "certification" labels, law enforcement officers must try and use other characteristics to determine if a rider is wearing a FMVSS No. 218-compliant helmet. By making the producing and obtaining of misleading look-alike "certification" labels harder, we hope to facilitate State law enforcement.

As stated above, due to the simplicity of the current certification label, it is easy to produce and acquire misleading look-alike "certification" labels. Because the label bears only the letters "DOT," label manufacturers can manufacture them cheaply and in large quantities. The labels are available online, and sometimes available for a nominal or no fee at shops that sell novelty motorcycle helmets. Label manufacturers and label distributors or sellers claim that the labels are merely novelty labels and that DOT stands for "Doing Our Thing." It is also easy for riders to affix a label, as they merely need attach one of these easily-available labels to the outside of their novelty helmet.

The NPRM proposed several elements that would make it more difficult for label manufacturers to manufacture, and novelty helmet users to obtain a misleading look-alike "certification" label. First, we proposed to add the word "Certified" to the label. This, we believed, would eliminate any plausibility to the argument that the "DOT" labels they manufactured are mere novelty labels. Second, we proposed that the label contain the manufacturer's name and model designation. This would require a different certification label for each helmet model, and make manufacture of misleading look-alike "certification" labels far more complicated than merely manufacturing generic "DOT" labels that can be used on any novelty helmet. Third, NHTSA examined a variety of means to make application of the certification label more difficult than merely attaching a label to the exterior of the helmet. In the NPRM, NHTSA examined numerous alternative means of accomplishing this, including using a hologram, embossing the certification onto the helmet, sewing the certification mark on the chinstrap, and applying a clear coating above the certification label. Ultimately, NHTSA proposed regulatory text requiring that the certification label be applied by the manufacturer under a clear coating, believing that this would make it more difficult for end-users to apply misleading look-alike "certification" labels. In addition, it sought comment on adopting the alternatives in the final rule.

1. Addition of the Terms "Certified" and "FMVSS No. 218"

While most commenters supported the addition of the word "Certified" to the certification label, there was some disagreement. On the one hand, many commenters suggested that the addition of the word "Certified" was not enough, and that the agency should also require the addition of some iteration of the term "FMVSS No. 218" to make clear that the label conveys certification of a Federal motor vehicle safety standard. On the other hand, some commenters did not support the change to the label, believing that it would add cost and be of no value to safety.

Some commenters expressed concern that the term "certified" was ambiguous. Shoei commented that introduction of the word "certified" would imply that the Department of Transportation had certified the helmet itself, which would be incorrect, as NHTSA relies on manufacturer self-certification. Shoei stated that, even with just the current label, some customers request to see documentation indicating that the DOT has approved of or certified the helmet. While we sympathize with Shoei, we do not believe that use of a term other than "certified" (*e.g.,* "compliant") would completely eliminate confusion. Other commenters stated that ambiguity could be lessened by a reference to FMVSS No. 218, which could be added to the label in addition to or in lieu of the word "certified." These commenters included IIHS, Arai, and Shark. IIHS stated that a reference to FMVSS No. 218 would deny producers of misleading look-alike "certification"

[33] Docket NHTSA–2008–0157–0160.
[34] Docket NHTSA–2008–0157–0103.
[35] Docket NHTSA–2008–0157–0166.
[36] Docket NHTSA–2008–0157–0156.
[37] Docket NHTSA–2008–0157–0129 and 0164.
[38] Docket NHTSA–2008–0157–0161.
[39] Docket NHTSA–2008–0157–0021.
[40] Docket NHTSA–2008–0157–0157.
[41] Docket NHTSA–2008–0157–0143.
[42] Docket NHTSA–2008–0157–0058 and 0088.

labels the plausible argument that their labels have any other meaning besides referencing and indicating compliance with the Federal standard. Shark and Arai also both stated that a reference to FMVSS No. 218 would better convey the intent of the certification label.

MRF argued against the necessity of adding language to the certification label. It stated that the label is the least important part of the helmet, and that changing it will only force producers of misleading look-alike "certification" labels to become more creative and eventually circumvent the standard. While we disagree with MRF's conclusion, we are heartened that it states the changes will make it more difficult to produce misleading look-alike "certification" labels. It is our hope that this marginal increase in difficulty will translate into a decrease in on-road use of novelty helmets.

After considering the comments, we have decided to retain the word "Certified" on the helmet, but also add the phrase "FMVSS No. 218." The goal of this part of the proposal was to clearly indicate compliance with Federal standards, and we believe the addition of "FMVSS No. 218" makes this abundantly clear.

2. Manufacturer Name and Model Designation

We believe that addition of the helmet manufacturer's name and/or brand [43] and precise model designation on the certification label is one of the most important parts of this rulemaking. Requiring this information would force producers of misleading look-alike "certification" either to fabricate information or to use a legitimate manufacturer's existing name and/or brand, thereby likely infringing upon a trademark. The manufacturer whose trademark has been infringed could take action against the infringing party under trademark law. Should the producer of the misleading look-alike "certification" labels produce a label bearing a fabricated manufacturer name and/or brand name or should a motorcyclist attach such label to his or her novelty helmet, law enforcement officials may be able to identify these labels as misleading look-alike "certification" labels.

NHTSA received several comments relating to this requirement. The American Society for Testing and Materials (ASTM), MIC, and Shark all recommended dropping the model designation requirement (but not the manufacturer's designation) from the label. They claimed that requiring manufacturers to produce a different label for each helmet model would increase costs, and that the manufacturer designation alone would have a similar effect at lower costs. Arai suggested allowing manufacturers to use trademarks as their manufacturer designation. Finally, one commenter, Max Rettig,[44] stated that the manufacturer's name should be removed from the outer label to reduce variability between helmets.

After considering the comments, we are amending the standard to require the manufacturer name and/or brand name as well as the model designation on the certification label. With regard to the comments that such a requirement could increase costs, we believe that those costs are so low as to be far outweighed by the safety benefits. As shown in more detail below, we believe that the total incremental cost for this final rule is on the order of two cents per helmet. We believe that requiring helmet manufacturers to design and produce a unique label for each helmet model is a very small and reasonable burden. We estimate that the costs to label design will be minimal, as only one design is needed for each helmet model, and most helmet manufacturers produce a relatively small number of helmet models, on the order of 10.

On the other hand, including both the helmet manufacturer's designation, i.e., name or brand name, and model designation makes the label far more difficult to produce than just including the helmet manufacturer's designation. As noted above, several commenters requested that we require only the manufacturer's designation on the helmet, as our doing so would allow them to continue to produce only one label design for all their helmets. However, the cost of preserving that relatively small convenience would be greatly facilitating the work of producers of misleading look-alike "certification" labels. These producers could similarly simply produce such labels with the designations of any known novelty helmet manufacturers. If there are any known novelty manufacturers and if they have any intellectual property rights, we would not expect them to act to protect those rights in this instance.

With regard to Mr. Rettig's comment that the manufacturer's designation should be removed from the exterior (*i.e.,* certification) label, we do not agree with the suggestion. The commenter suggested that this would reduce variability between authentic helmet labels and allow easier enforcement against novelty helmets. We do not agree. One main rationale for this change is to make labels somewhat unique to each helmet model, so that producing and obtaining misleading look-alike "certification" labels suitable for a particular helmet model are more difficult. While the commenter believes that the manufacturer's designation on the interior label would be sufficient, we note that law enforcement officers can only be certain of having the opportunity to see the exterior certification label. Mr. Rettig's suggestion would not make enforcement any easier. Further, if the manufacturer's designation were eliminated, that step would make it easier to produce misleading look-alike "certification" labels. In his comment, Mr. Rettig also suggested that NHTSA create a serial number system that would correspond to the make and model of the helmet, in order to identify helmets containing manufacturing defects more quickly. We decline to do so, because such a system is unnecessary given NHTSA's enforcement procedures, and would impose additional costs on manufacturers.

3. Water Decal and Application of a Clear Coating

As stated above, in addition to proposing additional and more distinct information on the certification label, NHTSA also considered a variety of requirements that would make it physically more difficult to apply a misleading look-alike "certification" label after the helmet had been manufactured. Among the alternatives considered in the NPRM were requiring a hologram, a trademarked DOT symbol, etching the DOT symbol into the outer surface of the helmet, and sewing the certification into the chinstrap. Ultimately, NHTSA decided not to propose regulatory text for these approaches due to tentative concerns about cost, practicability, safety, or other concerns. It stated in the preamble of the NPRM that it was proposing that the certification label be a water decal and that a clear coat be applied over it, but included in the proposed regulatory text only a requirement for clear coating on the exterior of the helmet. The agency believed that this would provide a fast and reliable way for law enforcement officers to detect misleading look-alike "certification" labels applied by end users, because these labels would present a different tactile feel than those located under the manufacturer's clear coating.

[43] A brand can take any one of several forms, for example, a name, logo, trademark, or symbol.

[44] Docket NHTSA–2008–0157–0051.

The rationale for requiring the certification label to be located underneath a clear coating was described in the NPRM.[45] The proposal was based on three assumptions. First, NHTSA stated that it believed that all current FMVSS No. 218-compliant motorcycle helmets already had a clear coat, and that it did not know of any compliant helmet model of a type for which clear coats would be impracticable (e.g., leather-shelled helmets). Second, because clear coats with water decals beneath were assumed to be universal, the agency believed that the application of a water decal under the clear coat would be essentially "costless" for manufacturers, as they would essentially add only the one-time cost of designing the decal. Third, the agency believed that it would be extremely difficult or costly for end users to duplicate the effect of a certification underneath a clear coat.

A. Comments Received

NHTSA received comments on the issue of clear coating from Shoei, Arai, Shark, ASTM, MIC, and three members of the general public on this issue. The comments made several points that directly impacted the agency's analysis of the issue. First, several commenters pointed out that, contrary to NHTSA's assumption, there were several FMVSS-compliant helmets available on the market with finishes that rendered clear coating impracticable. These included helmets with matte finishes, leather or cloth coverings, and some dyed resin plastics. Commenters stated that requiring a clear coating would, at the least, add substantial cost to some of these helmets, and be impossible for others (*e.g.,* leather or cloth-covered helmets).

Helmet manufacturers all stated that, contrary to NHTSA's belief, many helmets do not use a clear coat finish. Shark was the only manufacturer to support the proposed clear coating requirement, even as it noted two models it produced without one. Arai stated that many types of helmets, including non-glossy colors and matte finishes, do not have a clear coating applied, and that the requirement that all helmets have a clear coat would thereby limit consumer choice with regard to helmet styles. Shoei did not support the requirement either, stating that the clear coat imposes design restrictions on manufacturers, and arguing that the cost of the clear coating was much higher than NHTSA anticipated, in the range of 60 cents to one dollar per helmet.

ASTM and MIC made similar remarks in their comments. ASTM, in addition to stating that a clear coat would be inappropriate for helmets with matte or cloth finishes, pointed out that many plastic helmets are made of color impregnated thermoplastic and are not painted, and that a water decal would not be appropriate for those helmets either. ASTM argued that the labeling requirement must not restrict available exterior finishes and must allow greater flexibility to allow manufacturers to provide the requested information on the exterior of helmets. MIC listed "flat or matte finishes, polycarbonate, vacuum thermoforming finish, and [helmets with] leather or cloth exteriors" as examples where a clear coat requirement would be inappropriate, and provided Web sites where examples of those helmets could be seen. It instead requested that the proposed rule be modified to permit non clear-coat finished helmets. In the alternative, MIC requested that if a clear coat amendment is adopted, the final rule could also permit any of the "alternatives considered" in the NPRM (*i.e.,* etching, hologram, or sewn into the chinstrap) as alternative means of compliance.

B. NHTSA Analysis

As stated above, the proposed requirement for using a water decal as the certification label and placing it under clear coating rested on three assumptions. First, it assumed that the requirement was practicable, meaning that all helmet manufacturers could comply with the requirement. Second, it assumed that because all FMVSS No. 218-compliant helmets already had a clear coat, affixing a water decal certification label under the coating would be essentially costless, but for the cost of the decal itself and a change in the manufacturing process. Third, it assumed that the requirement would be effective in preventing users from attaching a misleading look-alike "certification" label to a helmet that could confuse a law enforcement officer. However, after considering the comments, re-analyzing the market, and conducting further testing, we have changed our position on all three of these assumptions. For the reasons described below, we are not adopting the water decal or clear coating requirement.

First, using the information supplied by the commenters, NHTSA was able to locate several examples of helmets certified to comply with FMVSS No. 218 on the market with leather or matte finishes, for which a clear coating would be an impracticable addition. Second, considering that it is now evident that there are many helmets that do not have a clear coat, we would need to revise our cost estimates. We have concluded that Shoei's estimate of $0.60 to $1.00 per helmet is a reasonably accurate measurement of the cost to add a clear coat and water decal to a helmet that does not already have these features.

Third and finally, NHTSA undertook additional in-house testing to verify the claims of commenters that the clear coat requirement would not be as effective a deterrent to attaching misleading look-alike "certification" labels as originally believed. The agency investigated the Web site *doingourthing.com,* which purported to describe a step-by-step set of instructions on how to affix a DOT label to a motorcycle helmet and apply a clear coating over the top of it. Based on the instructions on the Web site, we applied a DOT label purchased from the internet to the back of a test helmet and applied two coats of spray-on clear coat (polyurethane). This was a relatively simple process, and the results, while not so good as a manufacturer-applied water decal, were judged sufficient to allow a user to avoid arousing the suspicions of a law enforcement officer.

As a result of our testing, we no longer believe that using a water decal and placing it under a clear coating would be an effective means of thwarting the production and application of misleading look-alike "certification" labels. We note that in the NPRM, we reasoned that applying a "[c]lear coating over the "DOT" symbol would result in a smooth surface that is visually and tactilely different from a label applied to the surface after the clear coating process is completed."[46] Based on our experience, however, we have seen that an end user can create the look and tactile feel of a clear coating with minimal cost and difficulty. Combined with the impracticality of applying clear coats to some helmets, and substantial cost of adding it to the other helmets, we have decided not to require the certification label on any helmet to be placed under a clear coating.

C. Alternatives Considered

Despite deciding, ultimately, to not adopt the clear coat requirement, we have also decided not to adopt any of the alternative methods discussed in the NPRM for making the certification to make it more tamper-resistant. As stated above, in the NPRM, the agency analyzed three alternative methods of applying the DOT symbol: sewing the symbol into the chinstrap, etching the

[45] See 73 FR at 57302.

[46] 73 FR at 57302.

symbol into the helmet, and using a hologram to make the symbol more difficult to duplicate and thus make the misleading labeling of novelty helmets more difficult. The reasons that the agency is declining to adopt any of these alternatives, in lieu of the unadopted proposal of a clear coat requirement, are unchanged from the reasons cited in the NPRM. As discussed below, we did invite public comments on whether any or all of the alternatives should be adopted in the final rule. Our reasons for not adopting any of them are summarized below.

The agency considered each alternative to clear coating, but ultimately did not propose regulatory text for any of them because of tentative concerns regarding effectiveness or cost. Sewing the symbol onto the chinstrap was tentatively rejected because law enforcement personnel stated that it would be difficult for officers to see the symbol in that location.

Etching or embossing the symbol into the material of the helmet was tentatively rejected because the manufacturers claimed that it would be a significant economic burden to them due to higher manufacturing costs and to substantially higher scrap rates, up to 5 percent for plastic constructed helmets and 15 percent for fiberglass constructed helmet shells. The manufacturers claimed further that sharp radii, which would exist at the interface between the molded surface of the shell and the raised or recessed letters of the "DOT" symbol, would cause production problems in the molding and finishing, leading to higher manufacturing costs. Therefore, etching and embossing the DOT symbol on the helmet was tentatively judged to be an unjustified economic cost. Finally, using a hologram was tentatively rejected given the agency's belief that it would add 70 cents to the cost of a label (and thus to the cost of FMVSS No. 218-compliant helmets) and that there are other effective methods to reduce the production and application of misleading look-alike "certification" available that impose a lower burden on manufacturers.

Several commenters discussed these alternatives, or presented additional alternatives. One commenter from the law enforcement community, Mr. Steven Rust, said that a molded symbol would greatly benefit officers' ability to distinguish compliant helmets.[47] While we agree that a molded DOT symbol would make identification of novelty helmets easier, we do not believe it would be foolproof, as novelty helmet manufacturers or end users could also etch a reasonable facsimile into noncompliant helmets. Further, as explained above, this option could be very costly, due to the reported increase in manufacturing costs and scrappage rates of some helmet types.

Another commenter suggested replacing the exterior compliance label with a radio-frequency identification (RFID) tagging system,[48] which would allow law enforcement officers to simply "scan" a helmet to determine if it is compliant. A third commenter suggested replacing the manufacturer and model designation with a bar code. With regard to these two options, we believe that they would also impose disproportionate costs as they would make it necessary for law enforcement officers to purchase and carry additional equipment.[49]

One commenter suggested trademarking the DOT symbol to prevent label manufacturers from producing misleading look-alike "certification" labels.[50] We did not pursue this course of action because first, and most importantly, the agency is not able to license a trademark for manufacturers to use at their discretion. Second, trademarks are easily counterfeited and the agency has limited resources to enforce trademark rights against the printers, sellers and distributors of labels inappropriately bearing a trade-marked symbol. Therefore, we do not believe that trademarking the DOT symbol would pose an obstacle for unscrupulous producers of misleading look-alike "certification" labels.

Finally, GHSA suggested incorporating the month and year of manufacture into the information on the exterior label.[51] We are not adopting that suggestion, because it would require helmet manufacturers to update their designs monthly, at some cost, while makers of misleading look-alike "certification" labels could simply include any month and date on their designs, which would necessarily not be detectable by law enforcement. Therefore, the agency concluded that this was not an effective method for reducing the producing and applying of misleading look-alike "certification" labels.

4. Location of the Certification Label

Another change proposed in the NPRM was to widen the range of acceptable locations for the certification. Currently, paragraph S5.6.1(e) requires that the certification label be located with the horizontal centerline of the DOT symbol between 1⅛ inches (2.9 cm) and 1⅜ inches (3.5 cm) from the bottom edge of the posterior of the helmet. The reason for this requirement is to prevent the certification label from being mounted in an area that would be difficult for a law enforcement officer to see easily, such as the top of a helmet. However, due to issues of practicality, such as having large edge rolls, some manufacturers have judged it necessary to mount the certification labels a little higher than the maximum allowed distance in order to assure complete label-to-helmet contact. We note that the certification labels at issue met all other requirements. However, to address such circumstances, the agency proposed to extend the range of allowable locations for the certification label to anywhere from 1 to 3 inches (2.5 to 7.6 cm). This change would allow manufacturers more flexibility in their label placement, while still allowing law enforcement officers to observe the labels easily in the course of their duties.

Commenters universally supported the expansion of the permitted range. ASTM noted that it had petitioned the agency to make a similar change in an earlier petition for rulemaking. MIC said that for years, the current label position requirement has been problematic for any helmet with an edge cover or trim more than one inch vertically or other design feature influencing label position. Arai supported the proposal, stating that this change would give manufacturers more flexibility. Shoei also had no objections to the change.

Shark supported the proposal, but requested that there be an allowance that enables manufacturers to position the DOT label slightly off the vertical. Currently, paragraph S5.6.1(e) of the standard specifies that the DOT label be "centered laterally" and with the "horizontal centerline of the symbol located * * * [2.9 to 3.5 cm] * * * from the posterior portion of the helmet." Shark argued that in some instances, the design of a helmet precludes positioning the certification label in the center of the helmet, and that there should be an allowance for the label to be located slightly to the sides, as indicated in the photographs in Shark's comment.

Despite Shark's comment, we are not adopting a horizontal allowance for positioning the DOT label. We believe that the centered position of the exterior DOT label is important because law enforcement officers need to be able to spot the DOT label quickly and easily.

[47] Docket NHTSA–2008–0157–0042.

[48] Comment from Sachiko Jensen, Docket NHTSA–2008–0157–0053.

[49] An RFID reader costs several hundred dollars.

[50] Anonymous comment, Docket NHTSA–2008–0157–0039.

[51] Docket NHTSA–2008–0157–0021.

That is why there is a specified position location, as well as a requirement that the symbol shall appear in a color that contrasts with the background, and a minimum requirement for letter size.

5. Size of Letters/Numbers

Regarding the lettering for the certification label, the NPRM proposed a minimum lettering height of 0.09 inch (.23 cm) for the manufacturer and model designations, as well as the word "certified." As the agency received no comments on this issue, we are adopting the requirement as proposed in the NPRM.

6. Current and New Certification Labels

Figure 1—Current Certification Label

DOT

Figure 2—New Certification Label (Example)

Mfr. Name and/or Brand
Model Designation

DOT

FMVSS No. 218
CERTIFIED

7. Information Required on New Certification and Other Labels

TABLE 4

Required information	
On certification label (required to be on exterior)	On separate label or labels (typically placed in interior)
Manufacturer's name and/or brand	Manufacturer's name
Model designation	Discrete size
"DOT"	Month and year of manufacture
"FMVSS No. 218"	Instructions to the purchaser regarding construction, handling, cleaning, use, modifications, and damage
"CERTIFIED"	

b. Size Labeling

In the NPRM, the agency indicated in the preamble it was proposing to replace the current requirement in paragraph S5.6.1(c) to specify the "size" with a requirement to specify the "discrete size or discrete size range." However, in the proposed regulatory text (S5.6.1(b)), the agency proposed simply to change "size" to "discrete size."

The reason for the proposal was to preclude FMVSS No. 218 enforcement difficulties that could arise under the existing standard which requires that helmets be labeled only with a generic size specification (*e.g.,* Small, Medium, or Large). Enforceability problems can arise because while S6.1 specifies which headform is used to test helmets with a particular "designated discrete size or size range," [52] a helmet's labeled generic size may not correspond to the same size ranges that the agency uses to determine which headform to use for testing. To ensure that this issue does not cause problems in the future, the agency proposed to require the label to specify the "discrete size" of the helmet. The agency further proposed to define "discrete size" as meaning "a numerical value that corresponds to the diameter of an equivalent (±.25 inch or ±.64 cm) circle." The agency said that this definition would have two benefits. First, it would provide certainty as to the headform on which the helmet would be tested by NHTSA, thereby improving the enforceability of the standard. Second, it would provide more precise information to customers. Further, we note that the requirement would in no way preclude the manufacturer from specifying a generic size in addition to the discrete size on the size label.

1. Comments Received

NHTSA received numerous comments on the issue of size labeling. Several commenters questioned whether the proposed labeling requirements would improve the information given to consumers or aid in resolving enforceability concerns.

With regard to customer information, commenters generally stated that either the proposed labeling was not necessary, or that the discrete size information should refer to the circumference of the helmet, rather than the diameter, as proposed in the NPRM. MIC and ASTM stated that use of the diameter is essentially another way to use "hat sizes" as a means to indicate the helmet size, albeit with the precision reduced to ¼ inch increments.[53] Both commenters recommended that the label refer to the circumference, instead of the diameter, because it would allow comparison to a measurement of a consumer's head or the test headform without multiplying by the mathematical operator, pi. Shoei stated that while it had no particular objection to the proposed change in the size labeling requirement, it believes that the indication of the helmet size is only for reference purposes. On the other hand, Shark commented that the discrete size would be confusing to customers, an idea that was seconded by David Morena,[54] and that it would not reflect the actual headform sizes used for testing, although Shark did not explain why this latter statement would be so.

With regard to enforceability concerns, ASTM suggested that recent enforceability problems would not necessarily be solved by use of a "discrete," rather than generic labeled size. ASTM noted the 2007 instance in which an AFX TX–66 helmet, which

[52] Helmets with a designated discrete size not exceeding 6¾ (European size: 54) are tested on a small headform, those with a size above 6¾, but do not exceed 7½ (European size: 60) are tested on a medium headform, and those with a size exceeding 7½ are tested on a large headform. *See* S6.1.1.

[53] ASTM noted that traditional hat sizes are unitless numbers in ⅛ [inch] increments corresponding to the average diameter of the hat. *See* Docket NHTSA–2008–0157–0149, p. 4.

[54] Docket NHTSA–2008–0157–0106.

had been both generically and discretely mislabeled as being "XL (62–63 cm)," failed the impact attenuation test when tested on a large headform, but was found to pass when tested on a medium headform. It stated that the proposed discrete labeling requirement would not have had an impact on enforcement in that case.

2. NHTSA Analysis and Conclusion

After consideration of the comments received, NHTSA has decided to adopt the size labeling requirements largely as proposed in the NPRM. Despite statements by commenters, we reaffirm our belief that discrete size labeling requirements will both improve customer information regarding the size of the helmet and avert potential enforceability problems.

First, we note that some commenters may have misinterpreted what is specifically required to meet the "discrete size labeling" requirement. The specific definition in the proposal is:

Discrete size means a numerical value that corresponds to the diameter of an equivalent (± .25 inch or ± .64 cm) circle.

This proposed provision does not require that the numerical value listed on the helmet be given in quarter-inch increments. Instead, it only requires that the printed number indicate the diameter of an equivalent circle, and that circle's diameter can be rounded to the nearest quarter inch. Thus, comments that the NHTSA requirement is similar, but inferior to, "hat sizes" are incorrect. Instead, the regulation allows manufacturers to put exact hat sizes on their helmets. We also note that the requirement to include discrete sizes does not prevent manufacturers from also including a generic size marker on their helmets, if they choose to do so.

In response to comments that the discrete size definition NHTSA proposed should be based on the circumference instead of the diameter of the helmet, NHTSA is modifying its definition of "discrete size" to reflect industry convention. The industry convention has been recognized in S6.1.1 of the standard since the 1988 (Reference: 53 FR 11288, Apr. 6, 1988) amendment to the rule. When manufacturers of helmets sold in the United States (U.S.) designate a helmet's discrete size using the American convention, the discrete size is a numerical value that corresponds to the diameter of an equivalent circle and is reported in inches; however, the same helmet can be designated using a European size convention. Using the European size convention, the discrete size is a numerical value that corresponds to the circumference of an equivalent circle and is reported in centimeters. The intention of defining "discrete size" was not to change industry convention or how discrete sizes are used in the standard, but rather to explain the term. Specifying the inner diameter of the helmet in inches is equivalent to the U.S. hat size designation and specifying the interior circumference of the helmet in centimeters is equivalent to the European hat size designation. We believe that consumers are familiar with these two methods of hat size designations and thus will not be confused. For these reasons, we are amending the definition of discrete size to read:

Discrete size means a numerical value that corresponds to the diameter of an equivalent circle representing the helmet interior in inches (± 0.25 inch) or to the circumference of the equivalent circle in centimeters (± 0.64 centimeters).

We also believe that ASTM's suggestion that the proposed discrete size labeling requirement will not aid enforcement procedures is incorrect. As stated above, the reason NHTSA considered requiring manufacturers to be more precise in their size designation is because the requirement in paragraph S6.1 states that the designated size is used for testing purposes. As some manufacturers now use only generic size labeling, this can lead to questions of which headform must be used by the agency. ASTM argues that in one case, a manufacturer mislabeled a helmet both generically and discretely, and that therefore, the discrete labeling did not help NHTSA select the appropriate headform. While this is true, this is not a fault attributable to the standard, but an act of technical noncompliance by the manufacturer. The agency believes that for compliant and accurately-labeled helmets, this amendment will improve enforceability.

c. Impact Attenuation Test

The impact attenuation test is designed to ensure that a motorcycle helmet is capable of absorbing sufficient energy upon impact with a fixed hard object. Under paragraph S5.1, *Impact attenuation,* the peak acceleration of the test headform is required not to exceed 400g, accelerations above 200g not to exceed a cumulative duration of 2.0 milliseconds, and accelerations above 150g not to exceed a cumulative duration of 4.0 milliseconds.

The current impact attenuation test is specified in paragraph S7.1, *Impact attenuation test.* In this test, the helmet is first fitted on a test headform. The helmet/headform assembly is then dropped in a guided free fall onto two types of steel anvils, one flat and the other hemispherical. The first part of the test specifies two identical impacts onto the flat steel anvil, and the second part of the test requires two identical impacts onto the hemispherical steel anvil. The performance requirement is that the headform acceleration profile must be less than the specified accelerations given in S5.1.

In our 2008 proposal, NHTSA identified two aspects of the impact attenuation test that we believed needed modification. The first was the definition of the term "identical impacts," which is currently not defined in the text of the regulation. We believed that this could lead to substantial confusion for manufacturers. The second issue was the range of acceptable velocities of the impacts. This issue arose when the agency attempted to determine whether certain helmets, manufactured by NexL, complied with the impact attenuation requirements.[55] To summarize the NPRM, the agency indicated that in the absence of both a minimum and maximum acceptable velocity, it could be difficult to take enforcement action against a helmet in the event that NHTSA testing revealed a noncompliance.

1. Definition of "Impact Site"

The "identical impacts" requirement was originally derived from American National Standards Institute (ANSI) Z90.1–1971, "Specifications for Protective Headgear for Vehicular Users," which defined the term as impacts centered not more than ¼ inch (0.6 cm) apart.[56] However, because NHTSA neither adopted the ANSI definition nor incorporated it by reference, the term is undefined in the agency's standard. The standard currently reads as follows:

S7.1.2 Each helmet is impacted at four sites with two successive identical impacts at each site. Two of these sites are impacted upon a flat steel anvil and two upon a hemispherical steel anvil as specified in S7.1.10 and S7.1.11. The impact sites are at any point on the area above the test line described in paragraph S6.2.3, and separated by a distance not less than one-sixth of the maximum circumference of the helmet in the test area.

Due to the lack of a specific definition, we believe there may be two reasonable interpretations of this term. The first is that "identical impacts" means two successive impacts on the exact same spot of the test helmet, or

[55] *See* 73 FR at 57306.

[56] *See,* ANSI Z90.1, 9.3.1.

separated by not more than a reasonable tolerance (such as the ANSI Z90.1 tolerance of ¼ inch (0.64 cm)). The second is that "identical impacts" has a broader meaning, implying the exact same test conditions (*i.e.,* velocity, location, and conditioning of the helmet) for the successive impacts, regardless of whether the helmet/headform assembly actually impacted the fixed anvil at or near the same location on the helmet on the subsequent drop. In order to clarify the test procedure, the agency proposed to drop the term and replace it with a more defined specification. For reasons discussed in detail in the NPRM, the agency proposed that the standard specify that the locations of the two impacts on the helmet be no more than ¾ inch (1.9 cm) apart.

We also proposed to define the term "impact site" to mean "the location where the helmet contacts the center of the anvil." This was in response to questions raised by MIC and ASTM regarding the precise meaning of the term impact site. The proposed provision reads as follows:

• S7.1.2 Each helmet is impacted at four sites with two successive impacts at each site. For each site, the location where the helmet contacts the center of the anvil on the second impact shall not be greater than 0.75 inch [57] (1.9 cm) from the location where the helmet contacts the center of the anvil on the first impact. Two of these sites are impacted upon a flat steel anvil and two upon a hemispherical steel anvil as specified in S7.1.10 and S7.1.11. The impact sites are at any point on the area above the test line described in paragraph S6.2.3, and separated by a distance not less than one-sixth of the maximum circumference of the helmet in the test area.

The agency received three comments relating to the proposal to eliminate the term "identical impacts" and define the term "impact sites," from ASTM, MIC, and Shark. Shark stated that it agreed with the 0.75 inch (1.9 cm) tolerance between the two impacts, but requested that "both impacts should remain above the test line." While we agree with the idea, we believe that this is already clear from the language of S7.1.2, so we are not making a change from the wording of the proposed language. ASTM and MIC suggested different definitions for the term impact site, which are discussed below.

ASTM and MIC requested clarification of the term "impact site." ASTM stated that there were three possible interpretations of the proposed definition, which as stated above, is "the location where the helmet contacts the center of the anvil." These were: (1) The literal "point" where the curved helmet shell first contacts the test anvil before the test; (2) a point projected from the headform center of gravity to the center of the impact anvil; or (3) the dynamic impact "footprint" created during the impact test. Similarly, MIC suggested two similar readings: (1) The exact point where the curved helmet shell first contacts the test anvil before the test; or (2) the dynamic impact "footprint" created during the impact test. For reasons described below, we have decided to clarify the definition, and believe that the first reading provides the clearest description of what the agency intends.

NHTSA agrees that the proposed definition can be made clearer. As stated above, the proposed definition of "impact site" was "the location where the helmet contacts the center of the anvil." In the context of the proposed regulation, the term was used as follows:

• The impact sites are at any point on the area above the test line described in paragraph S6.2.3, and separated by a distance not less than one-sixth of the maximum circumference of the helmet in the test area.[58]

Our intention in proposing the revised regulation was to replace the term "identical impacts," which was comparatively vague, with a term that would be more precise and enforceable. We believe that the first reading of the definition, suggested by the commenters, is a more effective means of communicating that intent. With this new language, it should be clear that the NHTSA test requires that the headform assembly impact the anvil in two locations on the shell of the helmet. Those two locations must be located no more than 0.75 inches apart from each other. For this reason, we are amending the definition of impact site to read:

Impact site means the point on the helmet where the helmet shell first contacts the test anvil during the impact attenuation test.

NHTSA does not believe that the other interpretations offered by ASTM and MIC to define the impact site based on the dynamic footprint are appropriate for the standard. The dynamic footprint, which refers to the total area on the helmet shell that contacts the anvil during the attenuation tests, is a function of helmet design and not known until the test is complete.[59] Because the "impact site" must remain above the test line pursuant to S7.1.2, adopting this definition of impact site would require that testers limit their choice of impact sites to those well above the test line, given the uncertainty about the full extent of the deformation. We believe that this reading would introduce the very element of uncertainty into our test procedures that this rulemaking action is designed to eliminate.

NHTSA also does not believe the reading of the term "impact site" as "the point projected from the headform center of gravity to the center of the impact anvil" is accurate. This is because such a reading would conflict with paragraph S7.1.8. That paragraph, which specifies the locations of the centers of gravity of the test headform and drop assembly, allows substantially more leeway than ASTM's second suggested definition of "impact site." This definition would remove that flexibility, and impose additional burdens on testers and manufacturers without demonstrable safety benefits.

2. Specification of Test Velocity Tolerance Range

Specifying a range of acceptable speeds for the impact attenuation test was a central consideration in undertaking this rulemaking. As evidenced by the NexL case, NHTSA's current procedure for the impact attenuation test led to several difficulties with enforcement. The first was that, by testing slightly below the threshold velocity, NexL was able to claim that the test did not conclusively show that the helmet would have failed at the required velocity. Second, the specification of a minimum, but no maximum speed created a situation in which NHTSA could test at any speed above the stated minimum, leading to compliance difficulties for manufacturers. NHTSA believes that by specifying a tolerable range of speeds, and requiring that helmets be able to meet the requirements of the impact attenuation test at every speed within that range, we will provide better guidance to manufacturers and better grounds for enforcement proceedings in the event a noncompliance is demonstrated.

As stated in the NPRM, the impact attenuation requirement was adopted from ANSI Z90.1. NHTSA did not intend for its test to be markedly different from the ANSI test. The ANSI standard specifies a specific height from

[57] Due to a typographical error, this was incorrectly published as .075 inch in the NPRM. The correct value is 0.75 inch. The error has been corrected in this document.

[58] 49 CFR 571.218, S7.1.2.

[59] This is because the helmet deforms slightly when it impacts the steel anvil, so that an area larger than the initial point of contact makes contact with the anvil. Depending on how much the helmet deforms, the dynamic footprint can be a larger or smaller area.

which the assembly should be dropped. The agency translated this height requirement into the aforementioned impact velocities. Since the intent of the agency was to adopt a similar test to that of ANSI Z90.1, and since ANSI Z90.1 specified drop heights that would result in a specified velocity in a guided free fall drop, it is the agency's intent that the impact attenuation be performed close to the converted ANSI speeds for the respective tests, and not at undefined impact speeds above these respective values. The agency therefore proposed to set the tolerance for the impact attenuation velocity at ± 1.2 ft/s (0.4 m/s) from the nominal values of either 19.7 ft/s (6.0 m/s) or 17.1 ft/s (5.2 m/s) depending on the anvil test. The tolerance was based on typical calibration limits and the uncertainty associated with the test system and test setup, and was described in detail in the NPRM.[60]

In response to the proposal, NHTSA received a number of comments. Comments received from Snell, Shoei, Shark, Arai, MIC, and ASTM all stated that the proposed velocity tolerance was too large. The concern expressed by these commenters was that if tested at the extreme upper end of the tolerance range (for example, 6.4 m/s on the flat anvil), a helmet that would comply at the nominal value of 6.0 m/s would not meet the impact attenuation requirements at the higher speed. Most commenters offered specific alternative suggestions for velocity tolerances, ranging from ± 0.15 m/s to 3 percent overall tolerances. Specifically, Arai and Shark suggested a velocity tolerance of ± 0.15 m/s, ASTM and MIC suggested a velocity tolerance of ± 3 percent (which would equal ± 0.156 m/s on the hemispherical anvil test, and ± 0.18 m/s on the flat anvil), and Shoei stated that it was capable of achieving tolerances under ± 0.2 m/s. The agency has carefully considered the comments received, and for the reasons described below, has decided to narrow the range of acceptable tolerances from ± 0.4 m/s to ± 0.2 m/s.

There are two major factors that NHTSA considered when evaluating the range of acceptable tolerances. First, the agency considered impact energy with respect to helmet design. Commenters generally prefer the smallest tolerance possible because increasing the allowable tolerance can subject helmets to more force upon impact, thereby having a substantial effect on helmet performance. This could cause some currently-compliant helmets to become noncompliant based merely on a change in testing procedures, a result we hope to avoid to the extent practicable. On the other hand, the agency is also constrained in how narrow a tolerance band it can specify due to the limitations on its own testing capabilities. Because the agency tests a large number of helmets and uses a variety of laboratories to do so, it is subject to somewhat more test variability than an individual manufacturer may be. Therefore, in the sections below, we analyze both factors.

A. Impact Energy

As stated above, the concern of most commenters was that the proposed tolerance range of ± 0.4 m/s was too great, and that many helmets that meet the acceptable limits imposed by the standard at 6.0 m/s would not pass if tested at the upper limit of 6.4 m/s. For example, ASTM stated simply that "[f]rom a practical standpoint, the NPRM would increase the test velocity and energy by a significant amount without any analysis of the effect on current helmets".[61] The reason for this statement is that, in order to ensure that a helmet could pass a NHTSA performance test, a manufacturer would need to ensure that it would pass if tested at the upper extreme of the tolerance range.[62] ASTM and Snell provided information in their comments about the problems the impact attenuation test could cause, as well as recommended narrower ranges that would not present problems (± 3 percent).[63] In a similar fashion, Shark and Arai suggested that the tolerance be reduced similarly, to a range of ± 0.15 m/s. Based on the comments received, as well as further analysis of the issue, we believe that reducing the permitting tolerance to ± 0.2 m/s would alleviate as many of the concerns regarding this final rule as the values suggested by the commenters. The ± 0.2 m/s figure was selected because it is similar to the figures recommended by the commenters (± 0.15 m/s and 3 percent, which is ± 0.18 m/s for the flat anvil test), but rounded to the nearest tenth of a meter per second.

MIC and ASTM both raised the argument that, in order to assure compliance, a helmet would need to meet the standard at the upper end of the tolerance range, and therefore in lab testing the helmet would need to be able to absorb significantly more energy than the current standard requires. Specifically, both commenters noted that the impact energy imparted to the helmet in the attenuation test could vary by as much as 30 percent between the low and high ends of the proposed ± 0.4 m/s tolerance range. They also pointed out that in a recent study,[64] when tested at significantly higher speeds (+0.9 m/s for the flat anvil, and +0.8 m/s for the hemispherical anvil), up to 60 percent of helmets failed some portion of the impact attenuation test. While the agency did not propose to test helmets at nearly that level of velocity, we are aware that by requiring that helmets meet the performance specifications at any speed in the tolerance range, some manufacturers may change their protocol for self-certifying their helmets. As ASTM and MIC stated, the 3 percent tolerance range used by the Consumer Product Safety Commission (CPSC) in its helmet testing guidelines would require a lesser and reasonable increase in imparted energy.

Using figures from ASTM's comment,[65] it is clear that the energy levels from the ± 0.2 m/s tolerance range the agency is considering are very similar to those proposed by ASTM and MIC. ASTM indicated that an increase from the currently-required 6.0 m/s to the highest-possible speed of 6.4 m/s would increase the imparted energy (using a large headform on the flat anvil) from 110 Joules to 125 Joules. Using the 6.18 m/s figure suggested by the commenters, the helmet would be subjected to only 116.5 Joules, compared to 117.2 Joules at a velocity of 6.2 m/s. We believe that there would be no substantial difference in terms of which helmets have difficulty complying with the impact attenuation requirements and wish to highlight the fact that the current text of the Standard specifies a minimum speed of 6.0 m/s.

In its comments, Snell presented a mathematical formula[66] by which one could calculate the amount of time a helmet's acceleration exceeded 200g. Snell used the formula to indicate that of six hypothetical helmets that would

[60] *See* 73 FR at 57307.

[61] Docket NHTSA–2008–0157–0150, p. 6.

[62] While the tolerance range would apply to both the flat and hemispherical anvil tests, the flat anvil test is generally where one would expect any failures to occur. Therefore, this notice generally refers to the velocities specified in the flat anvil tests (6.0 m/s plus a tolerance interval), instead of those in the hemispherical test (5.2 m/s plus a tolerance interval).

[63] This translates to a range of ± 0.18 m/s for the flat anvil test, and ± 0.156 m/s for the hemispherical anvil test.

[64] Thom, Hurt, Ouellet & Smith, "Modernization of the DOT Motorcycle Helmet Standard," Proceedings of the International Motorcycle Safety Conference, 2001.

[65] Docket NHTSA–2008–0157–0150, p. 6.

[66] The formula for computing the amount of time a helmet's acceleration is at or above 200g is $(T_{@200g}) = 1.25 * (1–2 * \arcsin(200/PG)/\pi)$ se $* T_L$ where PG is the peak acceleration of the impact pulse (quarter sine wave) and T_L is the time duration during the loading phase. Details provided in docket NHTSA–2008–0157–164.3.

meet the requirements if tested at 6.0 m/s (ranging from marginal to exceptional compliance with the S5.1(b) requirement), three would not pass if tested at 6.4 m/s.[67] The performance of the six hypothetical helmets, if tested at a velocity of precisely 6.0 m/s, is shown in Table 5 below. Note that helmet #1 barely meets the performance requirement when tested at this speed, as paragraph S5.1(b) limits the duration above 200g to 2.0 milliseconds or less.

TABLE 5

Velocity (6.0 m/s)	Peak G (G)	Pulse time-loading (msec)	Pulse time-unloading (msec)	Pulse time-total (msec)	Pulse time at or above 200 G (T@200g) (msec)
helmet #1	250	3.84	0.96	4.80	2.0
helmet #2	240	4.00	1.00	5.00	1.9
helmet #3	230	4.18	1.04	5.22	1.7
helmet #4	220	4.37	1.09	5.46	1.5
helmet #5	210	4.57	1.14	5.72	1.1
helmet #6	201	4.78	1.19	5.97	0.4

Using this formula, Snell calculated that half of the helmets would not comply with the standard if tested at 6.4 m/s. The calculations for an impact velocity of 6.4 m/s are shown in Table 6.

TABLE 6

Velocity (6.4 m/s)	Peak G (G)	Pulse time-loading (msec)	Pulse time-unloading (msec)	Pulse time-total (msec)	Pulse time at or above 200 G (T@200g) (msec)
helmet #1	266.7	3.84	0.96	4.80	2.2
helmet #2	256.0	4.00	1.00	5.00	2.1
helmet #3	245.0	4.18	1.04	5.22	2.1
helmet #4	234.7	4.37	1.09	5.46	1.9
helmet #5	224.0	4.57	1.14	5.72	1.7
helmet #6	214.4	4.78	1.19	5.97	1.4

In order to assess whether the ± 0.2 m/s tolerance interval would not cause undue burdens for helmet manufacturers, we employed the mathematical model of helmet impact testing used by Snell. We measured whether the compliance burdens would be more difficult using the ± 0.2 m/s than the ± 0.15 m/s tolerance recommended by Shark, Arai, and Shoei, as well as the ± 0.18 m/s tolerance recommended by MIC and ASTM.[68] The peak G (peak acceleration of the impact pulse) at the different impact velocities examined (6.15 m/s, 6.18 m/s, and 6.2 m/s) were determined by linearly interpolating between the peak G values in Table 5 for the 6 m/s impact velocity and those in Table 6 for the 6.4 m/s impact velocity. The calculations for ± 0.15 m/s and ± 0.18 m/s impact velocity tolerance are shown in Tables 7 and 8, respectively. The calculations for a ± 0.2 m/s impact velocity tolerance (impact velocity at 6.2 m/s) are shown in Table 9. As shown, only one of the hypothetical helmets in Snell's analysis (helmet #1, which marginally complied with the standard S5.1(b) when tested at exactly 6.0 m/s) showed only a marginal failure when tested at the other three impact velocities.

TABLE 7

Velocity (6.15 m/s)	Peak G (G)	Pulse time-loading (msec)	Pulse time-unloading (msec)	Pulse time-total (msec)	Pulse time at or above 200 G (T@200g) (msec)
helmet #1	256.3	3.84	0.96	4.80	2.1
helmet #2	246.0	4.00	1.00	5.00	2.0
helmet #3	235.8	4.18	1.04	5.22	1.9
helmet #4	225.5	4.37	1.09	5.46	1.7
helmet #5	215.3	4.57	1.14	5.72	1.4
helmet #6	206.0	4.78	1.19	5.97	0.9

[67] Pursuant to paragraph S5.1(b), accelerations in excess of 200g shall not exceed a cumulate duration of 2.0 milliseconds. It is this requirement that is most likely to cause a helmet to fail to comply with FMVSS No. 218.

[68] Docket NHTSA–2008–0157–0164.3.

TABLE 8

Velocity (6.18 m/s)	Peak G (G)	Pulse time-loading (msec)	Pulse time-unloading (msec)	Pulse time-total (msec)	Pulse time at or above 200 G (T@200g) (msec)
helmet #1	257.5	3.84	0.96	4.80	2.1
helmet #2	247.2	4.00	1.00	5.00	2.0
helmet #3	236.9	4.18	1.04	5.22	1.9
helmet #4	226.6	4.37	1.09	5.46	1.7
helmet #5	216.3	4.57	1.14	5.72	1.4
helmet #6	207.0	4.78	1.19	5.97	1.0

TABLE 9

Velocity 6.2 m/s	Peak G (G)	Pulse time-loading (msec)	Pulse time-unloading (msec)	Pulse time-total (msec)	Pulse time at or above 200 G (T@200g) (msec)
helmet #1	258.3	3.84	0.96	4.80	2.1
helmet #2	248.0	4.00	1.00	5.00	2.0
helmet #3	237.7	4.18	1.04	5.22	1.9
helmet #4	227.0	4.37	1.09	5.46	1.7
helmet #5	217.0	4.57	1.14	5.72	1.4
helmet #6	207.7	4.78	1.19	5.97	1.0

Based on these calculations, we do not believe that there is a significant difference if a helmet is tested at the outer limits of a ± 0.2, ± 0.18, or ± 0.15 m/s tolerance range. Further, as discussed above, we believe that the energy differential is small enough at a ± 0.2 m/s tolerance that there will be little if any difference in the marginal number of helmets that may experience compliance difficulty if tested at the outermost extremes of the tolerance range.

B. Achievable Tolerances

While the agency's desire to limit the potential increased impact energy brings the tolerance down, we are also careful to make sure the tolerances we specify are readily achievable by testing laboratories. In the NPRM, NHTSA used a statistical analysis of calibration error and non-calibration errors (derived from uncertainties in the test setup and testing variability) to determine the overall maximum possible error resulting from all variations combined. Based on our statistical analysis, we determined that in 95 percent of trials, a maximum error of 0.4 m/s was possible given the compound effect of all errors. Therefore, we proposed that the impact speed be specified as 5.2 m/s (6.0 m/s for the flat anvil) ± 0.4 m/s.[69]

As explained above, numerous commenters took issue with the ± 0.4 m/s figure, stating that if a helmet were tested at the upper end of the tolerance range, the significant amounts of extra energy gained could cause it to not meet the requirements of the impact attenuation test. Therefore, we have taken a new look at the available data to determine if a narrower tolerance range is practical given the limitations of testing equipment. After having performed an analysis of statistical data collected on 2,496 impact attenuation tests done by two test labs during 2007 and 2008, the agency has determined that it is feasible to narrow the tolerance to ± 0.2 m/s and still have nearly all tests fall within the bounds of the required tolerance. The goal was to ensure that whatever tolerance was adopted would capture at least 99 percent of the potential total test variability.

In determining a suitable interval of velocities for the helmet drop test, NHTSA examined a wide variety of factors that could contribute to test variability.[70] These included the velocity of the helmet, between-lab variability in velocity measurement, the effect of helmet conditioning, the location of the drop on the anvil, the difference between the first and second drops on the same location on the anvil, and a "random error" variable. After performing a statistical analysis of all variables, NHTSA determined that only helmet velocity (a standard deviation of 0.045 m/s for the hemispherical anvil, and 0.048 m/s for the flat anvil) and between-lab variability (a standard deviation of 0.017 m/s for the hemispherical anvil, and 0.020 m/s for the flat anvil) showed statistically significant differences in overall test performance. Combining these two independent sources of variability by the Root Sum Square method, NHTSA derived the following ranges for the 99 percent confidence interval:

[69] 73 FR 57306.

[70] The analysis is presented in more detail in "Analysis of Helmet Impact Velocity Experimental Data and Statistical Tolerance Design," NHTSA, DOT HS 811 305, April 2010. Available at *http://www-nrd.nhtsa.dot.gov/Pubs/811305.pdf.*

TABLE 10

Anvil type	Nominal velocity	99% confidence interval	± 3% velocity	Nominal velocity ± 0.2 m/s
Hemispherical	5.2 m/s	5.06–5.34 m/s	5.04–5.36 m/s	5.0–5.4 m/s.
Flat	6.0 m/s	5.84–6.16 m/s	5.82–6.18 m/s	5.8–6.2 m/s.

As shown in the table, the maximum possible allowable tolerance needed to ensure 99 percent of tests fall within the allowable range is ± 0.16 m/s. This is larger than the ± 0.15 m/s proposed by Shoei, Shark, and Arai, but just within the ± 3 percent velocity tolerance proposed by MIC and ASTM. Therefore, we believe that this is a feasible tolerance to use for testing purposes. We note that we have increased the maximum tolerance slightly to ± 0.2 m/s for rounding purposes, but do not believe that that will have a significant effect on the test, as shown in the section above.

d. Penetration Test

In addition to the impact attenuation and retention tests, the helmet standard also requires that compliant helmets meet a penetration test. The penetration test, described in paragraphs S7.2 through S7.2.8 of FMVSS No. 218, specifies that a penetration striker makes two separate blows to the exterior of the helmet, with the striker on a guided free fall. In the NPRM, NHTSA described the penetration test and proposed modifications to the helmet conditioning procedure that precedes it and the other two performance tests in paragraph S7. While NHTSA did not specifically propose adding test tolerances for the penetration test, several commenters suggested that the need for tolerances in this test was no different than the need for tolerances in the other performance specifications. The commenters recommended that, similar to other modifications in this rulemaking, small tolerances be added to the various specified dimensions of the striker and the drop height.

1. Comments Received

Four commenters discussed the penetration test. Two commenters, Andy F. Malinowski and ASTM, recommended that the penetration test be removed from the standard. Mr. Malinowski stated that it was unnecessary because "in an accident a helmet will normally hit a flat surface." ASTM cited research on helmet performance in Europe (the COST 327 study),[71] which recommended that penetration testing be deleted from standards. The commenter also stated it believes the epidemiology of U.S. accidents supports this position. Two helmet manufacturers, Shark and Arai, recommended that tolerances be added to the specifications for the drop height, mass, angle, cone height, and tip radius of the penetration striker. While Arai did not provide a specific rationale for its recommendations, Shark stated that its recommendations were made "in order to harmonize the equipment and repeatability of tests."[72] The recommendations made by the two manufacturers were nearly identical (with a slight difference in the cone height recommendation), and are reproduced below:

TABLE 11

Test specification (current requirement)	Arai recommendation	Shark recommendation
Drop height of penetration striker (3 m)	± 0.015 m	± 0.015 m.
Mass of penetration striker (3 kg)	± 0.05 kg	± 0.05 kg.
Included angle of penetration striker (60 degrees)	± 0.5 degrees	± 0.5 degrees.
Cone height of penetration striker (3.8 cm)	± 0.38 mm	± 0.35 mm.
Tip radius of penetration striker (0.5 mm)	± 0.1 mm	± 0.1 mm.

2. NHTSA Analysis and Conclusion

After carefully considering the comments, NHTSA has decided to add the recommended tolerances to the penetration test standard.[73] Given that the purpose of this rulemaking action is to increase the repeatability and enforceability of FMVSS No. 218,[74] we believe that the addition of these tolerances to the penetration test procedures is well within the scope of this rulemaking. Further, we believe that the specific test tolerances proposed by the two manufacturers are reasonable. We note that, with the exception of the suggested tip radius tolerance, no suggested tolerance is more than ± 2 percent of the total requirement. Even the tip radius tolerance, which is ± 20 percent of the total radius requirement, is still only 0.1 mm, and we do not believe that a difference of this magnitude would significantly alter the test. The agency believes that the tolerances suggested are appropriate for the manufacturing capabilities of test equipment manufacturers, and the calibration abilities of test laboratories, and notes that the values are similar to those expressed in NHTSA's test procedure.[75] Further, we do not believe that adjusting any or all of the properties of the penetration striker by the limit of the proposed tolerances would substantially alter the test results or have a deleterious effect on safety.

NHTSA is not following the suggestion of those commenters who requested that the penetration test be removed from the standard. To begin, we believe that such an action would be well outside of the scope of this rulemaking, which is designed to

[71] Chinn B., Canaple B., Derler S., Doyle D., Otte D., Schuller E., Willinger R. (2001) COST 327 Motorcycle Safety Helmets. Final Report of the Action.

[72] Docket NHTSA–2008–0157–0166.

[73] With regard to the small difference in the recommended cone height tolerances, we have decided to use Arai's recommendation of 0.38 mm, rather than Shark's recommendation of 0.35 mm, so that the tolerance is exactly 1 percent of the 3.8 cm cone height requirement. With regard to the recommendation to adopt the ± 0.5 kg tolerance to the mass of the penetration striker, FMVSS No. 218 uses English units as the primary units cited in the standard and due to rounding, we have decided to use ± 2 ounces as the tolerance.

[74] See 73 FR at 57308, which reads "[i]n keeping with the theme of providing more clearly defined, enforceable testing procedures for FMVSS No. 218 * * *"

[75] NHTSA test procedure TP–218–06, available at *http://www.nhtsa.gov.*

increase enforceability and clarity and make minor updates to the standard. Removing one of three performance tests would be a major modification to the substantive safety requirements and a major deviation from the NPRM. Second, we do not agree with the commenters that the penetration test is not meaningful. In 1997, an agency study on the feasibility of upgrading FMVSS No. 218 suggested that the agency retain the current penetration tests, describing them as meaningful.[76] The agency relied on this study in 2006, in its denial of a petition of inconsequential noncompliance for Fulmer Helmets.[77] While we recognize that ASTM submitted a 2007 petition for rulemaking regarding substantive updates to the helmet standard, including, among other issues, removing the penetration test, we will address that subject in response to ASTM's original petition at a later date. Therefore, in this final rule, we are not removing the penetration test requirement from the standard.

For the reasons above, we are amending paragraphs S7.2.4, S7.2.6, and S7.2.7 to reflect the addition of tolerances for the penetration test.

e. Quasi-Static Retention Test

FMVSS No. 218 specifies a static retention test as part of the performance specifications. The purpose of the test is to demonstrate that the retention system has the structural integrity necessary to help ensure that a motorcyclist's helmet stays on his or her head in the event of a crash. The test was originally adopted from the ANSI Z90.1 standard, which applied a static tensile load to the retention assembly of a complete helmet. Currently, the retention test, described in paragraphs S7.3 through S7.3.4 of the standard, specifies that a 50-pound (22.7 kg) preliminary load, followed by a 250-pound (113.4 kg) test load, is applied to the retention assembly. However, testing laboratories must apply the load at some rate, and the current regulation does not specify how this load is applied to the retention assembly.[78] Without that specification, there is some latitude as to what rate a test laboratory should increase the force until the full 300-pound load is applied to the retention assembly. Such latitude is what led to the dispute between NexL and NHTSA, described above, over whether certain NexL helmets complied with the retention requirements.

In order to increase the clarity and enforceability of the retention specification, the NPRM proposed adding a specific load application test to the requirements, and recharacterizing the test as a "quasi-static" test, to reflect the new dynamic aspect. There were three reasons for proposing a rate. First, NHTSA believed that specifying the rate would help helmet manufacturers self-certify their products with a greater degree of certainty. Second, providing a load application rate would prevent manufacturers from using a significantly different rate from NHTSA's compliance laboratories, and thus attaining different results, as occurred in the NexL case.

The proposed load application rate was 0.4 to 1.2 inches (1 to 3 cm) per minute, the same rate as was specified in NHTSA's test procedures. We believe that this rate is reasonable and consistent with what the agency and the majority of manufacturers have been using in their compliance testing.

NHTSA received three comments that discussed the load application rate. Arai, ASTM, and MIC all agreed with the specification of a quasi-static load application rate, all of them stating that specifying such a rate would be appropriate and that they have no objections to the 0.4–1.2 inches (1–3 cm) per minute value proposed by the agency. The agency also received numerous comments, discussed below, that helmet retention strength can cause neck injuries, although without supporting information.

Based on our analysis and the comments received, we are adopting the load application rate proposed in the NPRM. We are not altering the proposal in response to comments suggesting that increased retention system strength may cause neck injuries. First, we note that this change does not increase the retention strength; it merely clarifies how it is to be measured. Second, as noted in the NPRM, our research indicates that helmets do not change injury rates to any areas of the body, and the commenters provided no data to indicate otherwise. Therefore, we are amending paragraphs S7.3.1 and S7.3.2 to reflect the specified load application rate.

f. Helmet Conditioning Tolerances

In order to ensure repeatability of testing, FMVSS No. 218 requires that helmets be conditioned in a certain manner before testing. These conditioning specifications are laid out in paragraph S6.4.1. This paragraph describes four conditions to which a helmet must be exposed for a 12-hour period of time before being subjected to the testing sequences described in paragraph S7 of the regulation; and specifies temperatures, relative humidity, and the time periods for which the helmet must be exposed.

As described in the NPRM, the agency proposed to modify the temperatures to include a range of temperatures and relative humidity. The NPRM also proposed that the current 12-hour time period be specified as a minimum time period for conditioning. Similar to the rationale for proposing tolerances throughout FMVSS No. 218, we stated that this would enable NHTSA to undertake legally enforceable testing of helmets at the conditions specified within the tolerances. The specific values proposed in the NPRM[79] were:

(a) *Ambient conditions.* Expose to any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) and any relative humidity from 30 to and including 70 percent for a minimum of 12 hours.

(b) *Low temperature.* Expose to any temperature from 5 °F to and including 23 °F (from −15 °C to and including −5 °C) for a minimum of 12 hours.

(c) *High temperature.* Expose to any temperature from 113 °F to and including 131 °F (from 45 °C to and including 55 °C) for a minimum of 12 hours.

(d) *Water immersion.* Immerse in water at any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) for a minimum of 12 hours.

Comments received on the matter of helmet conditioning were received from ASTM, MIC, Arai, Shoei, and Shark. Two issues were raised by commenters that warrant reconsideration of the proposed values by the agency. Many groups suggested that the conditioning time proposed by the agency be substantially revised, from the proposed 12-hour minimum period to a range of 4 to 24 hours. Additionally, while some commenters agreed with NHTSA's proposed temperature and humidity tolerances, several suggested narrowing the limits.

[76] D.R. Thom, H.H. Hurt, T.A. Smith, J.V. Ouellet, "Feasibility Study of Upgrading FMVSS No. 218, Motorcycle Helmets," Head Protection Research Laboratory, University of Southern California, DTNH22–97–P–02001. See conclusions, p. 54.

[77] 71 FR 77092, December 22, 2006.

[78] While the regulation does not specify it, NHTSA's test procedures specify that the load is applied at 1.0–3.0 cm/min. See NHTSA TP–218–06.

[79] It should be noted that there was a discrepancy in the preamble and proposed regulatory text of the NPRM. While the preamble cited a temperature range for the water immersion test of 68–86 degrees F, the regulatory text specified a range of 61–79 degrees. The figures for the water immersion test in the preamble are a clerical error, and we note that the tests should be conducted at ambient temperatures, and the range of 61–79 degrees corresponds to the dry ambient temperature range given in the NPRM.

With regard to helmet conditioning time, the basic argument cited by multiple commenters is that the values in this range would permit helmets to be conditioned during normal business hours, thereby reducing the burden of testing. Further, they argued that the helmet is in a steady state during this entire range, so that additional conditioning time beyond four hours does not affect the ability of the helmet to meet the performance specifications. Finally, commenters requested that a maximum conditioning time be specified, to prevent a situation where a helmet is subject to indefinite conditioning.

Based on our analysis of the comments and further research into the subject, in this final rule NHTSA is modifying the conditioning times based on suggestions from the commenters and further analysis done by the agency. Given the commenter's arguments, we investigated the claims that a four-hour conditioning period would adequately condition a helmet, and note the statement in ASTM's comment that a 1997 study commissioned by NHTSA stated, "The data * * * show no statistically significant effect of reducing the pre-test environmental conditioning time from 12 to 4 hours."[80] Based on this more recent study, and the comments received by multiple sources, NHTSA has agreed to adopt a minimum helmet conditioning time of no less than four hours for all helmet conditions. Additionally, to address concerns of helmets being conditioned indefinitely, we are adopting a maximum helmet conditioning time of 24 hours for the low and high temperature conditions, and water immersion procedures. In addition to preventing indefinite conditioning, this figure will permit overnight conditioning of helmets and the agency does not believe that it will affect compliance at all. It also aligns NHTSA's standard with other helmet standards that use 4–24 hour conditioning periods.

With respect to the conditioning temperature and relative humidity, the agency received comments that both supported the proposed values as well as those that suggested alternative values for these conditions. ASTM and MIC supported the values proposed in the NPRM, stating that there has never been any evidence that ambient humidity affects helmet performance, as well as supporting the proposal to equalize ambient room and water temperatures.

Foreign-based motorcycle helmet makers suggested that the agency adopt different values. Arai suggested the following test conditions:

Ambient Condition: temperature 25 ± 5 °C; relative humidity 60 ± 20%.

Hot Condition: temperature 50 ± 2 °C.

Cold Condition: temperature −10 ± 2 °C.

Water Immersion: temperature 25 ± 5 °C.

In its comment, Arai argued that these conditioning values would make NHTSA's condition nearly identical to other national standards, including JIS T8133: 2007;[81] BS6658: 1985;[82] and ECE R22–05.[83] Shark recommended the same values as Arai, except that it recommended a cold condition of −20 ± 2 °C. Similarly, Shoei recommended narrower ± 2 °C tolerances for hot and cold temperature tolerances, stating that their current conditioning unit controls temperature very precisely, and that it is possible to maintain this narrow range. It also specifically commented that the range for the cold condition was problematic due to the sensitivity of plastics to cold temperatures, and stated that it had experience that a product not affected at −5 °C was broken at −15 °C.

After carefully considering the comments and issues involved, NHTSA has decided to adopt the temperature and humidity values and tolerances proposed in the NPRM. While we are cognizant of the desire by some manufacturers to use the tolerances they use for foreign testing, we do not believe that the use of such narrow tolerance ranges is necessary to ensure safety or produce repeatable results. Further, based on the equipment familiar to the agency, and contrary to Shoei's comment, the equipment necessary to maintain this tight tolerance across all conditions is cost prohibitive and would be an additional burden on helmet testers. For these reasons, the agency declines to alter the proposed values and will maintain a ± 5 °C tolerance for each of the conditioning procedures.

g. Other Tolerances

While not discussed in the NPRM, NHTSA received comments regarding several other parts of FMVSS No. 218 where tolerances could provide additional flexibility and/or guidance. Two helmet manufacturers, Arai and Shark, suggested adding tolerances to the values in Table 1 of the standard, which specifies weights for the impact attenuation test drop assembly for small, medium, and large test headforms. According to paragraph S7.1.7, the drop assembly weights listed in Table 1 consist of the weight of the test headform and the supporting assembly.

Both Arai and Shark commented that NHTSA should specify a tolerance for the drop assembly weights in Table 1 of the standard. Currently, the weights specified are 3.5, 5.0, and 6.1 kg, for the small, medium, and large test headform drop assemblies, respectively. The commenters (specifically Arai) stated that it is not realistic for test labs to provide ± 0.0 kg drop assembly mass, as this degree of precision is nearly impossible for test equipment manufacturers. Arai requested that NHTSA add tolerances of ± 0.1 kg to the weights in Table 1, while Shark requested a ± 0.15 kg tolerance be added to these values. While not specifically proposed in the NPRM, this minor clarification is closely related to the goals of adding reasonable and enforceable tolerances to FMVSS No. 218.

After considering the comments, NHTSA is adding a tolerance of ± 0.1 kg (± 0.2 lb) to the weights specified Table 1. We believe that because the weight of the supporting assembly[84] is specified as a range of 0.9–1.1 kg (*i.e.,* 1.0 ± 0.1 kg), in paragraph S7.1.7, a tolerance level is appropriate for the combined weight of the drop assembly. NHTSA examined the increase in impact energy for the upper bound of allowable drop assembly weight (3.6 kg for small headform, 5.1 kg for medium headform and 6.2 kg for large headform) and found that it only increased by 1.5 to 3 percent from that currently in the standard. The change in impact energy due to the allowable tolerance in drop assembly weight is significantly smaller than that due to the allowable tolerance in impact velocity. Therefore, we believe the drop assembly weight tolerance of ± 0.1 kg is practicable and will have little, if any, effect on helmets that currently comply with the standard. The addition of the ± 0.1 kg tolerances will be added to the drop assembly weights in Table 1.

h. Other Issues Addressed in the NPRM

As discussed in the NPRM, the agency is updating the standard to include a more recent version of the SAE Recommended Practice currently incorporated by reference in the standard. Paragraph S7.1.9 currently

[80] Thom, Hurt, Smith & Ouellet, "Feasibility Study of Upgrading FMVSS No. 218, Motorcycle Helmets," Head Protection Research Laboratory, University of Southern California, Final Report, September 1977.

[81] Japan.

[82] United Kingdom.

[83] UN Economic Commission for Europe.

[84] The supporting assembly weight is defined as the drop assembly weight minus the combined weight of the test headform, the headform's clamp down ring, and its tie down screws. See S7.1.7.

specifies that "the acceleration data channel complies with SAE Recommended Practice J211 JUN 80, Instrumentation for Impact Tests, requirements for channel class 1,000." SAE Recommended Practice J211 has been revised several times since June of 1980 and the agency proposed to update the cited practice to SAE Recommended Practice J211/1, revised March 1995, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation." This version is consistent with the current requirements for the regulation's filter needs, and it is also consistent with other recently updated standards and regulations. As the agency did not receive any comments regarding this part of the proposal, the new updated version of J211 is being incorporated into the standard.

The agency is also correcting a typographical mistake regarding the labeling of Figures 7 and 8 in the standard. We noted that Figures 7 and 8 in FMVSS No. 218 were inadvertently switched at some time in the past. To correct this error, NHTSA proposed to keep the titles the same for each Figure, and to switch the diagrams so the diagrams for the medium and large headforms properly correspond to the figure titles. This change is being made to the standard.

i. Other Issues Raised by Commenters

In addition to the issues specifically addressed in the NPRM, many commenters addressed matters that were not central to the issues of helmet labeling or changing the tolerances for test procedures. Nonetheless, we will address those issues briefly in this section.

1. Necessity of Universal State Helmet Use Laws and Specifications

Many commenters, including many of the individual commenters who submitted their statements to the docket, took the opportunity to argue for or against State helmet use laws. Given the substantial contributions by helmets to reducing deaths and injuries, and the inability of other measures to reduce substantially the need for those contributions, NHTSA strongly encourages the use of motorcycle helmets by all motorcyclists while riding, and the enactment of State laws requiring such use.

In addition, NHTSA seeks to ensure that helmets sold for use by motorcyclists are safe and effective. To that end, NHTSA promulgated FMVSS No. 218, which provides a minimum set of performance requirements that all motorcycle helmets must meet. To aid in the enforcing of State helmet use laws, we are adopting improved labeling requirements in this rule so that law enforcement officers can better distinguish compliant motorcycle helmets from noncompliant helmets or other headwear that riders may be wearing or purchasing.

MRF also asked questions about existing helmets. They asked whether existing helmets would continue to be legal, or whether riders would need to purchase new helmets after the final rule becomes effective. MRF also asked what would become of unsold older helmets. Questions regarding State helmet use laws need to be directed to the States. As to FMVSS No. 218, it applies to newly-manufactured motorcycle helmets. Manufacturers may continue to produce helmets and certify them to the current version of FMVSS No. 218 until the effective date of this final rule. Those older certified helmets may be sold even after the effective date of this rule.

2. Recent Actions by the National Transportation Safety Board and American Academy of Orthopaedic Surgeons in Support of Universal State Motorcycle Helmet Use Laws

In November 2010, NTSB updated its Most Wanted List of Transportation Safety Improvements by adding motorcycle safety to it and urging all States to require that all persons shall wear a FMVSS No. 218-compliant motorcycle helmet while riding (operating), or as a passenger on, any motorcycle.[85] NTSB released a map of the United States detailing[86] which States have full and effective laws and which States do not.

In addition, it issued a safety alert[87] documenting the extent of the motorcycle safety problem and the contributions that helmets can make to address that problem. It published the following information and urged States to enact universal helmet use laws:

The grim facts:

- Deaths from motorcycle crashes had more than doubled in the past decade—from 2,294 in 1998 to 5,290 in 2008—Another 96,000 people were injured in motorcycle crashes in 2008.
- Although there was a decline in 2009, 4,462 motorcyclists, or an average of 12 motorcyclists everyday, were still lost! Another 90,000 motorcyclists were injured.
- The number of motorcycle deaths in 2009 is more than double the total number of people killed in 2009 in all aviation, rail, marine and pipeline accidents combined.
- Head injuries are a leading cause of death in motorcycle crashes.
- Motorcyclists who crash without a helmet are three times more likely to have brain injuries than those wearing a helmet.
- In addition to the tragic loss of life, the economic cost to society is enormous. In 2005, motorcyclists without helmets were involved in 36 percent of all motorcycle crashes, but represented 70 percent of the total cost of all motorcycle crashes—$12.2 billion.
- Medical and other costs for unhelmeted riders involved in crashes are staggering, estimated at $310,000 per crash-involved motorcyclist. That's more than four times the overall cost of accidents involving helmeted riders.

Helmets save lives

- DOT-compliant helmets (DOT FMVSS 218) are extremely effective. They can prevent injury and death from motorcycle crashes.
- Wearing a helmet reduces the overall risk of dying in a crash by 37%.
- In addition to preventing fatalities, the use of helmets reduces the need for ambulance service, hospitalization, intensive care, rehabilitation, and long-term care as a result of motorcycle crashes.
- Wearing a helmet does *not* increase the risk of other types of injury.

Motorcycle helmet laws

- 20 states, D.C., and 4 territories require all riders and passengers to wear helmets; 27 states and 1 territory have partial laws requiring minors and/or passengers to wear helmets; currently 3 states, Illinois, Iowa and New Hampshire have no helmet use requirement.
- States that have repealed laws requiring all riders and passengers to wear helmets have seen dramatically lower helmet usage rates and significant increases in deaths and injuries.
- Partial laws do not protect younger riders. Only universal helmet laws significantly reduce fatality rates for riders aged 15–20.

In September 2010, the American Academy of Orthopaedic Surgeons (AAOS) revised its position statement urging the States to enact laws requiring the use of motorcycle helmet use laws.[88] The statement says, in part:

Orthopaedic surgeons, the medical specialists most often called upon to treat injuries to cyclists, believe a significant reduction in fatalities and head injuries could be effected through the implementation of laws mandating the use of helmets by all motorcycle and bicycle drivers and passengers. The AAOS strongly endorses such mandatory helmet laws.

Numerous studies in various parts of the United States have shown that helmet use reduces the severity and cost associated with injuries to motorcycle riders. Federal efforts beginning with the Highway Safety Act of 1966 achieved the passage of state laws

[85] *http://www.ntsb.gov/Recs/mostwanted/motorcycle_safety.htm.*

[86] *http://www.ntsb.gov/Recs/mostwanted/motorcycle_helmet_laws_map_2010.pdf.*

[87] The full safety alert is available at *http://www.ntsb.gov/alerts/SA_012.pdf.*

[88] *http://www.aaos.org/about/papers/position/1110.asp.*

mandating helmet use and by 1975, 47 states had enacted such laws. With the Highway Safety Act of 1977, however, Section 208 of which relaxed the pressure on states to have helmet laws, the federal government created the opportunity to measure the effectiveness of helmet use when 27 states repealed their helmet laws in the following three years.

Objective analysis of data from the mid 1990s (when helmet laws were widespread) and the late 1990s (when more than half the states had repealed such laws) shows clearly that head injuries and fatalities of motorcycle riders are reduced when motorcyclists wear helmets.

Moreover, the costs associated with treating motorcycle riders head injuries have been demonstrated to be significantly reduced—up to 80 percent in one university study—when helmet laws are in effect.

Recent studies again confirmed that the use of helmets reduces the risk of mortality and severe head injury with motorcycle riders who crash, although the former effect may be modified by other crash factors such as speed.

3. Role of Rider Education

Another issue raised extensively in comments is rider education. Many commenters argued that education could play a far larger role in creating benefits than the current rulemaking action. We agree that education and safe operating and riding practices are important. However, for the reasons discussed above near the beginning of this preamble, such education and practices do not and cannot reduce the need for enactment and implementation of up-to-date universal State helmet use laws. Even with education and safe operating and riding practices, there will continue to be substantial numbers of motorcycle crashes. As we have shown above, in the event of a crash, wearing a compliant helmet produces significant benefits at a relatively modest cost. NHTSA encourages motorcycle operators and riders and drivers of other motor vehicles to be cognizant of all road traffic and to drive in a safe manner.

4. Allegations of Potential for Helmets To Cause Harm

A number of opponents of mandatory helmet use argued that helmets cause injuries, rather than, or in addition to, alleviating others. Some commenters stated that helmet use has been linked to neck and spinal injuries. One commenter [89] submitted a report describing how full face helmets have been linked to basal skull fractures due to the transmission of impact energy from the face bar through the chin strap and into the skull.

The overwhelming preponderance of data and research demonstrates the positive effectiveness of compliant helmets. NHTSA has determined that motorcycle helmets are 37 percent effective in preventing fatalities [90] and 35 percent effective in preventing head injuries [91] to motorcycle riders. The agency estimates that motorcycle helmets have saved 1,800 lives in 2008 and an additional 823 lives would have been saved in that year had helmet use been 100 percent.[92]

Using the Crash Outcome Data Evaluation System (CODES) data files from 18 States, the agency examined the relationship between motorcycle helmet use and motorcycle crash outcomes in terms of head/face injuries and societal costs. In this data set, 6.6 percent of unhelmeted motorcyclists suffered a moderate to severe head or facial injury compared to 5.1 percent of helmeted motorcyclists. Unhelmeted motorcyclists sustained more severe head injuries than helmeted motorcyclists and as a result incurred higher hospital charges and societal costs associated with rehabilitation and lost work time. This study estimated that motorcycle helmets are 35 percent effective at preventing head injuries and 27 percent effective at preventing traumatic brain injury. While helmets were found to effectively mitigate head and face injuries, their use was not found to increase neck, thorax, or other body injuries. There were very few neck injuries in this data set with 0.04 percent unhelmeted motorcyclists and 0.07 percent helmeted motorcyclists sustaining moderate to severe neck injuries. There was also no significant difference in injury rate and severity levels between unhelmeted and helmeted motorcyclists for the neck, thorax, abdomen, and extremity regions.

An analysis of linked data files of FARS and Multiple Cause of Death (MCOD) [93] for the years 2000–2002 showed that among 8,539 motorcyclists (4,412 helmeted motorcyclists, 3,829 unhelmeted motorcyclists, and 298 motorcyclists with unknown helmet use) 51 percent of unhelmeted riders suffered a head injury as compared to about 35 percent of the helmeted riders. In addition, 83 percent of unhelmeted motorcyclist fatalities were attributed to head injuries, while 63 percent of helmeted motorcyclist fatalities were attributed to head injuries. Neck, thorax, and abdomen injuries were attributed to the cause of death in 3, 9, and 4 percent of fatally injured unhelmeted motorcyclists, respectively and to 7, 21, and 8 percent of fatally injured helmeted motorcyclists, respectively. This data shows that head injury is the predominant cause of death among motorcyclists and that death due to head injuries is 20 percent lower among helmeted motorcyclists than among unhelmeted motorcyclists. The higher proportion of injuries to other body regions that are attributed to the cause of death among helmeted motorcyclists is due to the concomitant lower proportion of fatalities attributed to head injuries and is not an indication that helmet use causes injuries to these other body regions, including the neck, thorax, and abdomen. Instead, helmet use increases the survival rate to the point that more neck, thoracic, and abdominal injuries are detected.

Contrary to the claims of helmet opponents, helmeted motorcyclists are less likely than unhelmeted motorcyclists to suffer a cervical spine (neck) injury as a result of a motorcycle crash. These claims are based on a single, well-refuted study. The Insurance Institute for Highway Safety addressed [94] that study as follows:

> Claims have been made that helmets increase the risk of neck injury and reduce peripheral vision and hearing, but there is no credible evidence to support these arguments. A study by J.P. Goldstein often is cited by helmet opponents as evidence that helmets cause neck injuries, allegedly by adding to head mass in a crash. More than a dozen studies have refuted Goldstein's findings. A study reported in the Annals of Emergency Medicine in 1994 analyzed 1,153 motorcycle crashes in four Midwestern states and determined that "helmets reduce head injuries without an increased occurrence of spinal injuries in motorcycle trauma."

(Footnotes omitted.)

More recent information further refutes that single study. Based on a retrospective analysis of all registered cases (62,840) of motorcycle collision in the National Trauma Data Bank that occurred between 2002 and 2006, the authors of a 2010 study found that helmeted motorcyclists had lower adjusted odds and a lower proportion of cervical spine injury than unhelmeted ones.[95]

[89] Comment from Dennis Salter, Docket NHTSA 2008–0157–0025.

[90] Motorcycle Helmet Effectiveness Revisited, March 2004, DOT HS 809 715, Technical Report, National Center for Statistics and Analysis, NHTSA.

[91] Motorcycle Helmet Use and Head and Facial Injuries: Crash Outcomes in CODES-Linked DATA, DOT HIS 811 208, NCSA Technical Report, NHTSA, October 2009.

[92] Lives Saved in 2008 by Restraint Use and Minimum Drinking Age Laws, DOT HS 811 153, May 2010.

[93] Subramanian, R., Bodily Injury Locations in Fatally Injured Motorcycle Riders, DOT HS 810 856.

[94] "Q&As: Motorcycle Helmet Use Laws, Insurance Institute for Highway Safety," available at *http://www.iihs.org/research/qanda/helmet_use.html* (Last accessed March 16, 2011).

[95] Crompton, J. G., Bone, C., Oyetunji, T., Pollack, K., Bolorunduro, O., Villegas, C., Stevens, K.,

The agency evaluated the effect of motorcycle helmet law repeal on motorcyclist fatalities in Florida,[96] Kentucky, Louisiana,[97] Texas, and Arkansas.[98] The evaluation showed a significant drop in helmet use and concomitant increase in fatalities and head injuries among motorcyclists after the repeal of helmet use laws in each of these States. Motorcyclist fatalities increased by 81 percent and motorcyclist hospital admissions for head injuries increased by 82 percent in Florida after the repeal. This increase in motorcyclist fatalities after the repeal of helmet laws in Florida was more than 40 percent higher than the national average for those years and was greater than the increase in motorcycle registrations and the vehicle miles travelled. Similar results were observed in Kentucky, Louisiana, Texas, and Arkansas after helmet laws were repealed.

The data presented in this section clearly demonstrate that the predominant cause of motorcyclist fatalities is injury to the head and that helmet use significantly reduces the risk of head injuries. The effect of helmet use on the risk of injury to other body regions is small or nonexistent. As a result, the benefits of helmet use far outweigh any disbenefits that may arise.

5. Allegations That Helmets Reduce Vision and Hearing

Some opponents of helmet use allege that helmets reduce vision and hearing. Neither of these allegations have merit.

Regarding claims that helmets obstruct vision, full-coverage helmets create only very minor and inconsequential restrictions in horizontal peripheral vision. Normal peripheral vision is between 100° and 110° to the left, and 100° and 110° to the right, of straight ahead.[99] Standard No. 218 requires that helmets provide 105° of vision to the left and 105° to the right.[100] Since over 90 percent of crashes happen within a range of 80° to the left or to the right (with the majority of the remainder occurring in rear-end collisions), it is clear that helmets do not affect peripheral vision or contribute to crashes. Further, a 1994 study found that wearing helmets does not restrict the likelihood of seeing a vehicle in an adjacent lane prior to initiating a lane change.[101] The test subjects compensated for the slight narrowing of the field of vision due to helmet use by rotating their heads slightly farther prior to making a lane change with no resulting reduction in the likelihood of their detecting a vehicle in an adjacent lane.

The allegation regarding effects on hearing is also contradicted by the 1994 study. In addition to examining the effect of wearing a helmet on the ability of motorcycle riders operating at normal highway speeds to visually detect the presence of vehicles in adjacent lanes before changing lanes, it also examined the effect on riders' ability to detect traffic sounds. While helmet use had no significant effect on hearing, wind speed did. As motorcycle speed and thus wind speed increased, the ability of both helmeted *and* unhelmeted riders to detect auditory signals was reduced.

6. Impact of Traumatic Brain Injury on Family, Friends and Co-Workers

Helmet use opponents argue that they are willing to bear the risks of their non-use of helmets and therefore should be given the freedom to do so.

However, no man is an island. The wish of helmet opponents to ride unprotected should be weighed together with the impact of traumatic brain injury on family, friends and co-workers. Helmet opponents do not alone bear the consequences of the risks they wish to assume, *i.e.,* suffering traumatic brain injury as a result of riding unhelmeted. The interrelatedness of the brain-injured persons, regardless of the sources or circumstances of injury, was addressed at a conference held under the auspices of the National Institutes of Health:[102]

Traumatic brain injury (TBI), broadly defined as brain injury from externally inflicted trauma, may result in significant impairment of an individual's physical, cognitive, and psychosocial functioning. In the United States, an estimated 1.5 to 2 million people incur TBI each year, principally as a result of vehicular incidents, falls, acts of violence, and sports accidents. The number of people surviving TBI with impairment has increased significantly in recent years, which is attributed to faster and more effective emergency care, quicker and safer transportation to specialized treatment facilities, and advances in acute medical management. TBI affects people of all ages and is the leading cause of long-term disability among children and young adults.

Each year, approximately 70,000 to 90,000 individuals incur a TBI resulting in a long-term, substantial loss of functioning. The consequences of TBI include a dramatic change in the individual's life-course, profound disruption of the family, enormous loss of income or earning potential, and large expenses over a lifetime. There are approximately 300,000 hospital admissions annually for persons with mild or moderate TBI, and an additional unknown number of traumatic brain injuries (TBIs) that are not diagnosed but may result in long-term disability.

Although TBI may result in physical impairment, the more problematic consequences involve the individual's cognition, emotional functioning, and behavior. These impact interpersonal relationships, school, and work. Cognitive-behavioral remediation, pharmacologic management, assistive technology, environmental manipulation, education, and counseling are among currently used treatments of these sequelae. These treatments are provided in freestanding rehabilitation hospitals, rehabilitation departments in general hospitals, a variety of day treatment or residential programs, skilled nursing facilities, schools, the community, and the home.

7. Recommended Changes to the Helmet Standard

Several commenters, including MIC, ASTM, and Snell, provided extensive recommendations on suggested improvements to the motorcycle helmet standard. These issues included:

- Reduction of the peak allowable headform acceleration from 400 to 300g.
- Impact attenuation tests for full-facial coverage helmets.
- Adoption of face shield tests, based on VESC–8 specifications.[103]
- Elimination of penetration resistance requirements.
- Test procedures for external rigid projections.
- Addition of a positional stability test.

Cornwell III, E. E., Efron, D., Haut, E. R.. "Motorcycle Helmets Associated with Lower Risk of Cervical Spine Injury: Debunking the Myth." Journal of the American College of Surgeons, 2011; DOI: 10.1016/j.jamcollsurg.2010.09.032. Available at *http://www.dor.state.ne.us/nohs/pdf/HelmetsSpine.pdf* (Last accessed March 15, 2011).

[96] Evaluation of the Repeal of the All-Rider Motorcycle Helmet Law in Florida, DOT HS 809 849, August 2005. *http://www.nhtsa.gov/staticfiles/nti/motorcycles/pdf/809849.pdf*

[97] Evaluation of the Repeal of Motorcycle Helmet Laws in Kentucky and Louisiana, DOT HS 809 530, October 2003, *http://www.nhtsa.gov/people/injury/pedbimot/motorcycle/kentuky-la03/index.html*

[98] Evaluation of Motorcycle Helmet Law Repeal in Arkansas and Texas, September 2000, *http://www.nhtsa.gov/people/injury/pedbimot/motorcycle/EvalofMotor.pdf.*

[99] "Without Motorcycle Helmets We all Pay the Price." National Highway Traffic Safety Administration, 2005. *http://www.nhtsa.gov/people/injury/pedbimot/motorcycle/safebike/.* (Last accessed March 16, 2011.)

[100] S5.4 *Configuration* of Standard No. 218 provides: * * * The helmet shall provide peripheral vision clearance of at least 105° to each side of the mid-sagittal plane, when the helmet is adjusted as specified in S6.3. * * *

[101] McKnight, A. J. and McKnight, A. S., "The Effects of Motorcycle Helmets Upon Seeing and Hearing." February 1994 (DOT HS 808 399).

[102] National Institutes of Health Consensus Development Conference Statement, Rehabilitation of Persons with Traumatic Brain Injury, October 26–28, 1998. Available at *http://www.nichd.nih.gov/publications/pubs/TBI_1999/NIH_Consensus_Statement.cfm.* (Last visited March 15, 2011)

[103] Vehicle Equipment Safety Commission, Regulation VESC–8, "Minimum Requirements for Motorcyclists' Eye Protection," July 1980.

• New means to measure helmet velocity.

• Reconsideration of the time duration criteria of the impact attenuation test.

Further, several commenters requested that a FMVSS No. 218 Advisory Committee should be created to confer with NHTSA and to facilitate more regular updates of the standard.

Because this rulemaking action is limited in scope to labeling upgrades and minor clarifications of test conditions and procedures for purposes of improving testing and enforceability, we are not making any of the substantive changes that these commenters requested at this time. We will continue to assess whether additional improvements should be made to the standard in the future.

8. Compliance Date

In the NPRM, the agency proposed a lead time of two years for the new requirements to become effective. We noted that the changes were such that helmet manufacturers should not have to purchase new test equipment or make any structural changes to their helmets to ensure compliance with the revised tests or updated SAE Recommended Practice J211. As the only changes being made to the standard are moderate changes to the labeling requirements and slight clarifications to test conditions and procedures to facilitate enforcement, we continue to believe that two years is adequate lead time. In response, MIC requested that the final rule be clarified to state that it will apply to helmets manufactured two years after publication of the final rule. MIC has correctly stated how the amended standard will apply. We do not believe the regulatory text needs to be modified to provide additional clarity on this point.

IV. Estimated Costs and Benefits

The total benefits deriving from this final rule depends upon how many motorcycle riders in States having motorcycle helmet use laws ("Law States") will change from using noncompliant helmets (novelty helmets) to FMVSS No. 218-certified helmets. As NHTSA does not have a reliable method of estimating how many riders may switch based on this final rule, we have created three reference scenarios, reflecting conditions where different numbers of users switched from novelty helmets to FMVSS No. 218-compliant helmets. Because we expect that most of the effects of this rule will come from the improved enforcement due to the labeling changes, we have limited the potential pool of switching riders to those in States with universal helmet laws. As the three scenarios show, while the scale of the overall costs and benefits changes dramatically depending on how many riders switch, the net cost per life saved remains relatively constant in all scenarios.

The estimated benefits are as follows. If 5 percent of the novelty helmet users in universal helmet law States make a switch (*i.e.,* the 5-percent scenario), the rule would save 22 to 38 lives. Under the 10-percent scenario, the final rule would save 44 to 75 lives. The rule would potentially save a maximum of 438 to 754 lives if all novelty helmet users in States with universal helmet laws switched to compliant helmets. Due to relatively small sample of non-fatal head injuries to fatal head injuries, the impact of the rule on non-fatal head injuries would be negligible.

There are two components to the total cost of the final rule. These are the incremental cost to manufacturers for implementing the recommended labeling requirements and the incremental cost to novelty helmet users who switch to use a FMVSS No. 218-certified helmet. With regard to the increased costs of labeling, the cost to manufacturers is estimated to be two cents per helmet. We do not believe that the other changes to the standard will result in significant costs to manufacturers or testers of helmets. For a total estimate of 5.2 million certified helmets manufactured per year, the cost translates to $0.1 million.

With regard to the costs to consumers, the incremental cost per replaced novelty helmet is estimated to be $46.02. Annually, an estimated 45,979, 91,958, and 919,579 novelty helmets sold in States with universal helmet laws would be replaced by compliant helmets for the 5-, 10-, and 100-percent scenarios, respectively. The corresponding total cost to novelty helmet users who switch to compliant helmets would be $2.1, $4.2, and $42.3 million. Considering the two factors, the total costs of the final rule would be:

• $2.2 million for the 5-percent scenario (= $0.1 + $2.1 million)

• $4.3 million for the 10-percent scenario (= $0.1 + $4.2 million)

• $42.4 million for the 100-percent scenario (= $0.1 + $42.3 million).

No matter what scenario is used, the net cost per equivalent life saved, discounted at a 3 percent and 7 percent discount rate, is less than $150,000. The net cost per equivalent life saved is estimated to range from $62,479 to $110,998 at a 3 percent rate and $71,180 to $130,586 at a 7 percent discount rate. The higher bound is from the 100-percent scenario and the lower bound is from the 5-percent scenario. These figures are well below the $6.23 million per life saved threshold that the agency generally takes into consideration when promulgating rulemaking.

TABLE 12—NET COST PER EQUIVALENT LIFE SAVED BY THREE SCENARIOS

[2008 dollars]

Scenarios	3% Discount rate		7% Discount rate	
	Low	High	Low	High
5-Percent	$65,293	$110,998	$73,998	$130,586
10-Percent	63,763	108,398	73,490	123,883
100-Percent	62,479	107,673	71,180	122,610

NHTSA has also conducted a net benefit analysis for this final rule. A net benefit analysis differs from a cost effectiveness analysis in that it requires that benefits be assigned a monetary value. This benefit value is compared to the monetary value of costs to derive a net benefit. The net benefits can range from $103.8 to $4,190.8 million. The lower range of the net benefits represents the benefit of the final rule for the 5-percent scenario using a 7 percent discount rate and the high end represents the maximum potential benefits using a 3 percent discount rate. Both of these are based on a $6.1 million comprehensive value for preventing a fatality, adjusted to $6.23 million to account for inflation.

TABLE 13—NET BENEFITS WITH $6.23 M COMPREHENSIVE COST PER LIFE

[In millions of 2008 dollars]

Scenarios	At 3% discount rate		At 7% discount rate	
	Low	High	Low	High
5-Percent	$122.5 M	$209.8 M	$103.8 M	$184.8 M
10-Percent	245.0 M	419.6 M	213.9 M	363.5 M
100-Percent	2,414.0 M	4,190.8 M	2,114.7 M	3,673.3 M

V. Related Issues for Future Action

While this final rule will make it easier for State and local law enforcement officials to enforce State laws requiring the use of FMVSS No. 218-compliant helmets, the agency anticipates that only a low percentage of motorcyclists using novelty helmets in States that have a universal helmet use law will switch to using compliant helmets. The agency's survey data indicates that in 2010, 22 percent of motorcyclists in States with a universal helmet use law wore novelty helmets while this was 11 percent in 2009. The popularity of novelty helmets may be related to a variety of factors, including opposition of some motorcyclists to helmet use laws, the lower cost of novelty helmets compared to compliant helmets, marketing strategies, and the ease of purchasing novelty helmets. Even in states with universal helmet use laws, motorcyclists are purchasing novelty helmets for on-road use despite disclaimers by retailers and manufacturers of novelty helmets stating that they are not intended for on-road use and are not protective gear and despite general knowledge among most motorcyclists in those states that wearing a novelty helmet does not meet those laws. As the Governors Highway Safety Association noted in its comments,

> [T]there is a growing problem with evasion of mandatory motorcycle laws in all states. Novelty helmets use is popular among a large segment of motorcycle riders, and these helmets do not meet FMVSS 218 standards, nor are they in compliance with a state's motorcycle helmet law. Many of these riders use the novelty helmets as a means of expressing displeasure with mandatory motorcycle helmet laws. They are also using counterfeit "DOT" stickers on these helmets so as to appear to be in compliance with the federal standards when, in fact, they are not in compliance. * * *
>
> * * * * *
>
> GHSA applauds the National Highway Traffic Safety Administration for promulgating this NPRM and directly addressing a problem that is a growing and pervasive one. Developing a regulation in the face of a vocal minority that opposes helmet laws and flagrantly violates those laws is not an easy task. We encourage the Agency to move forward and finalize this NPRM as quickly as possible so that helmet manufacturers can begin to produce helmets that meet the new standards and law enforcement officers will have the information they need to enforce improper helmet use.

Therefore, in order to increase further the percentage of motorcyclists who wear helmets that provide adequate head impact protection, the agency is assessing other actions that should be taken to address the marketing and selling of novelty helmets to motorcyclists for on-road use. In making that assessment, the agency is considering a variety of issues, including the following ones.

a. Are there examples of novelty "safety" equipment other than novelty helmets?

The agency is unaware of any motor vehicle equipment manufacturers that produce both compliant and "novelty" noncompliant versions of those items of equipment. For example, manufacturers of seat belts that comply with FMVSS No. 209, "Seat belt assemblies," or child seats that comply with FMVSS Nos. 213, "Child restraint systems," and 225, "Child restraint anchorage systems," do not also produce "novelty" seat belts or child seats that they declare, explicitly or implicitly, are not intended to provide protection, are not motor vehicle equipment subject to the FMVSSs and do not comply with them. Likewise, the agency is unaware of any manufacturers that produce only novelty safety belts or child seats. In either case, it is difficult to imagine any manufacturer, importer or seller of seat belts or child seats arguing that their seat belts or child seats are not motor vehicle equipment and making statements similar to the following disclaimer about their seat belts—

> Novelty seat belts are intended for display. They are not intended to be used in motor vehicles and are not designed to provide protection in a crash. Their use in a crash may result in serious injury. Use this seat belt at your own risk.

or child seats—

> Novelty child seats are intended for display. They are not intended to be used in motor vehicles and are not designed to provide protection in a crash. Their use in a crash may result in serious injury. Use this child seat at your own risk.

b. Where are novelty helmets manufactured?

Although novelty helmets are typically not labeled with either the name or location of their manufacturer, the agency believes that few of the novelty helmets are manufactured in the United States. NHTSA believes that a very high percentage of them are, instead, manufactured in South Asia or Southeast Asia.

c. How do novelty helmet manufacturers, importers and dealers attempt to rationalize their manufacture, importation and sale of noncompliant, non-protective helmets?

Despite widespread knowledge among motorcyclists that novelty motorcycle helmets do not meet federal safety performance requirements and are used nevertheless primarily by motorcyclists while riding on public roads and highways, importers and sellers of novelty helmets continue to produce, import and sell novelty motorcycle helmets. Although novelty motorcycle helmets are—

(1) Often either sold online on the same Web sites, even the same webpages, as FMVSS No. 218 compliant helmets, or by businesses that also sell motorcycles or motorcycle related products,

(2) documented by NHTSA as being used by as many as 22 percent (2010) of motorcyclists in States with motorcycle helmet use laws, and

(3) only minimally used for any purpose other than while riding a motorcycle, sellers of novelty helmets provide disclaimers like the following one to consumers:

> Novelty motorcycle helmets are for display or show purposes only. They are not intended to be used in motor vehicles and are not designed to provide protection in a crash. Their use in a crash may result in serious injury. Use at your own risk.

At least some novelty helmet manufacturers affix to their helmets a label bearing similar statements. Novelty helmet manufacturers do not,

however, typically affix any sort of label identifying themselves as the manufacturers. In contrast, manufacturers of compliant helmets attach a label to each of their helmets clearly identifying themselves, as required by FMVSS No. 218.

d. Is it permissible to sell noncompliant helmets in a state that does not have a law requiring the use of helmets?

If a type of equipment is an item of "motor vehicle equipment" within the meaning of the Vehicle Safety Act [104] and is subject to a FMVSS, but does not comply with that standard, it is impermissible to manufacture, import or sell that equipment in any state in the United States, regardless of whether that state requires the use of such equipment for some or all motorcyclists.

VI. Rulemaking Analyses and Notices

a. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This rulemaking action amends FMVSS No. 218 to help reduce the use of novelty helmets and improve enforceability of that Standard. This action was not reviewed by the Office of Management and Budget under E.O. 12866 and E.O. 13563. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not "significant" under them.

NHTSA has prepared a final regulatory evaluation for this action that discusses its potential benefits, costs, and other impacts. A summary of those impacts appears immediately before this section. A copy of the evaluation has been placed in the docket for this rulemaking action.

The evaluation suggests several aspects of this action that could directly or indirectly result in costs to consumers or industry. First, the agency believes that this rule will indirectly induce 5 to 10 percent of novelty helmet users, in States that have a universal helmet use law, to make a switch to purchase and use FMVSS No. 218-compliant helmets. We believe this is a reasonable assumption given that this rule will make it easier for law enforcement personnel to distinguish between helmets that have been certified to FMVSS No. 218 and novelty helmets to which misleading look-alike "certification" labels have been attached by users to create the misleading appearance of a certified helmet. This greater ease of identification is expected to lead to greater enforcement efforts and thus increased compliance with State motorcycle helmet use laws.

Second, this action amends labeling requirements that will cause helmet manufacturers to bear minimal costs and will not necessitate any changes to existing designs. The agency estimates that the cost of the labeling requirement will not exceed $0.02 per helmet.

Third, this rule adds tolerances to the compliance tests of FMVSS No. 218 and clarifies language in the standard to provide clear guidance to manufacturers on conducting compliance tests and to enable the agency to better undertake enforcement actions when a noncompliance is discovered. However, we do not believe that it will result in significant expenses or changes in helmet design or manufacture or testing procedures. Further information about the benefits and costs of this rulemaking action may be found above in Section IV of this preamble.

b. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. This rule imposes minimal cost burdens on helmet manufacturers, on the order of 2 cents per helmet. While the costs of designing a unique certification label for each model of helmet depend on the number of units of the model manufactured and sold (and therefore may cost more on a per-helmet basis for small manufacturers), the costs are still minimal compared to the overall cost of manufacturing a compliant motorcycle helmet. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

c. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the consultation already conducted and the rulemaking process.

The agency's proposals regarding the issue of misleading labels on novelty helmets are based on substantial analysis of the needs of law enforcement personnel and the concerns of manufacturers. In 2005, NHTSA's Office of Traffic Injury Control and Office of Vehicle Safety Compliance conducted an informal telephone survey of seven law enforcement offices,[105] a law enforcement organization,[106] and five motorcycle helmet manufacturers to discuss the problem of misleading "DOT" symbols. Respondents were asked their opinion on various approaches to the problem, the advantages and disadvantages of suggested approaches, and on other changes in the requirements that could help identify noncompliant helmets. Additionally, NHTSA published a Motorcycle Safety Program Plan on July 3, 2006. This plan discussed—among other topics—proposed initiatives to amend FMVSS No. 218 to address the problem of misleading labeling.

In addition, in response to the NPRM, the agency received supportive comments from the Governors Highway Safety Association and the Washington Association of Sheriffs and Police Chiefs. The Governors Highway Safety Association said: [107]

> One of the most effective strategies for reducing motorcycle fatalities is to encourage the use of motorcycle helmets. As noted in the NPRM, motorcycle helmets are 37% effective in reducing fatalities. Few other countermeasures can boast such a high level of effectiveness. GHSA strongly supports mandatory motorcycle helmet laws for all riders and encourages the thirty states without such laws to enact them.

[104] 49 U.S.C. 30102(a)(7).

[105] The seven law enforcement offices surveyed were Pittsburgh Bureau of Police; Louisiana State Police; Pennsylvania Department of Transportation; Canadian Officers; Riverside, California Police Department; Nebraska State Police; and the Maryland Department of Transportation.

[106] The law enforcement organization surveyed was the American Association of Motor Vehicle Administrators, Law Enforcement Committee.

[107] Docket NHTSA–2008–0157–0021.

Not only do many states fail to have the most protective motorcycle helmet laws, there is a growing problem with evasion of mandatory motorcycle laws in all states. Novelty helmets use is popular among a large segment of motorcycle riders, and these helmets do not meet FMVSS 218 standards, nor are they in compliance with a state's motorcycle helmet law. Many of these riders use the novelty helmets as a means of expressing displeasure with mandatory motorcycle helmet laws. They are also using counterfeit "DOT" stickers on these helmets so as to appear to be in compliance with the federal standards when, in fact, they are not in compliance.

NHTSA has recently conducted testing of these noncompliant helmets and found that they do not provide the rider with adequate coverage. The analysis indicated that the novelty helmets provide "minimal protection during a crash." GHSA is also unaware of any evidence to support claims that fake DOT labels are being used for any purposes other than counterfeiting. In short, novelty helmets are dangerous, and bogus DOT stickers are misleading.

It is GHSA's position that all states with mandatory motorcycle helmet laws should enforce them and ensure that motorcycle riders are using DOT-compliant helmets. The Association also strongly supports any changes to FMVSS 218 that would make it easier for law enforcement personnel to enforce their states' motorcycle helmet laws.

Accordingly, GHSA strongly supports the changes in the motorcycling helmet labeling requirements proposed in this NPRM. By requiring a water decal beneath the clear coating for the helmet, the label is more likely to be tamper-proof. It will be easier for law enforcement to determine whether the label was part of the manufacturing process or simply a decal affixed afterwards. By specifying that the manufacturer's name or brand and model designation be included in the outside label and by allowing the manufacturers to use several different formats, it will be more difficult for counterfeit label producers to develop a single bogus decal. By requiring the word "certified," it will put the onus on legitimate manufacturers of helmets to stand by their products and will clarify that "certified" is a modifier to "DOT" and that the "DOT" does not have some other meaning.

The Washington Association of Sheriffs and Police Chiefs provided similarly supportive comments: [108]

* * * WASPC believes the proposed rule changes for FMVSS 218 are reasonable and if approved will help reduce misleading labeling of novelty helmets that creates the impression that uncertified, non-compliant motorcycle helmets have been properly certified as compliant.

The new motorcycle helmet rule changes would help realize the full potential of compliant helmets by assisting law enforcement officers in Washington State with enforcing the state helmet use laws, thereby increasing the percentage of motorcycle riders wearing compliant helmets.

[108] Docket NHTSA–2008–0157–0161.

The use of the motorcycle safety helmet is the single most critical factor in the prevention and reduction of head injuries for motorcycle riders. Safety helmets that comply with FMVSS 218 are a significantly effective injury countermeasure.

The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant further consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would 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."

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e) Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

d. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

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

e. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

FMVSS No. 218 is largely based on ANSI Z90.1–1971, "Specifications for Protective Headgear for Vehicular Users," and incorporates the SAE Recommended Practice J211/1, revised March 1995, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation," both of which are voluntary consensus standards. While the Snell Memorial Foundation also produces helmet specifications (*e.g.,* the 2005 and 2010 Helmet Standards for use in Motorcycling), the agency continues to base its standard on the ANSI specification, as the purpose of this rulemaking action is to make minor changes and clarifications to the standard for labeling and enforcement purposes, and we have not analyzed the effectiveness of the Snell standard.

f. Unfunded Mandates Reform Act

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

g. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

h. Paperwork Reduction Act

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

i. Regulation Identifier Number (RIN)

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

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires, Motorcycle helmets.

In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

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

■ 2. Amend § 571.5 by revising paragraph (l)(4) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(l) * * *

(4) SAE Recommended Practice J211/1, revised March 1995, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation" into §§ 571.202a; 571.208; 571.218; 571.403.

* * * * *

■ 3. § 571.218 is amended by adding two definitions in alphabetical order in S4, by adding S5.6.2, by revising S5.6.1, S6.4.1, S7.1.2, S7.1.4(a) and (b), S7.1.9, S7.2.4, S7.2.6, S7.2.7, S7.3.1, and S7.3.2, and by revising Table 1, Figure 7, and Figure 8 to read as follows:

§ 571.218 Standard No. 218; Motorcycle Helmets.

* * * * *

S4 *Definitions*

* * * * *

Discrete size means a numerical value that corresponds to the diameter of an equivalent circle representing the helmet interior in inches (± 0.25 inch) or to the circumference of the equivalent circle in centimeters (± 0.64 centimeters).

* * * * *

Impact site means the point on the helmet where the helmet shell first contacts the test anvil during the impact attenuation test.

* * * * *

S5.6.1 On a label or labels separate from the certification label required by S5.6.2, each helmet shall be labeled permanently and legibly, in a manner such that the label(s) can be read easily without removing padding or any other permanent part, with the following:

(a) Manufacturer's name.

(b) Discrete size.

(c) Month and year of manufacture. This may be spelled out (for example, June 2010), or expressed in numerals (for example, 6/10).

(d) Instructions to the purchaser as follows:

(1) "Shell and liner constructed of (identify type(s) of materials)."

(2) "Helmet can be seriously damaged by some common substances without damage being visible to the user. Apply only the following: (Recommended cleaning agents, paints, adhesives, etc., as appropriate)."

(3) "Make no modifications. Fasten helmet securely. If helmet experiences a severe blow, return it to the manufacturer for inspection, or destroy it and replace it."

(4) Any additional relevant safety information should be applied at the time of purchase by means of an attached tag, brochure, or other suitable means.

S5.6.2 Certification. Each helmet shall be labeled permanently and legibly with a label, constituting the manufacturer's certification that the helmet conforms to the applicable Federal motor vehicle safety standards, that is separate from the label(s) used to comply with S5.6.1, and complies with paragraphs (a) through (c) of this section.

(a) Content, format, and appearance. The label required by paragraph S5.6.2 shall have the following content, format, and appearance:

(1) The symbol "DOT," horizontally centered on the label, in letters not less than 0.38 inch (1.0 cm) high.

(2) The term "FMVSS No. 218," horizontally centered beneath the symbol DOT, in letters not less than 0.09 inches (0.23 cm) high.

(3) The word "CERTIFIED," horizontally centered beneath the term

"FMVSS No. 218," in letters not less than 0.09 inches (0.23 cm) high.

(4) The precise model designation, horizontally centered above the symbol DOT, in letters and/or numerals not less than 0.09 inch (0.23 cm) high.

(5) The manufacturer's name and/or brand, horizontally centered above the model designation, in letters and/or numerals not less than 0.09 inch (0.23 cm) high.

(6) All symbols, letters and numerals shall be in a color that contrasts with the background of the label.

(b) Other information. No information, other than the information specified in subparagraph (a), shall appear on the label.

(c) Location. The label shall appear on the outer surface of the helmet and be placed so that it is centered laterally with the horizontal centerline of the DOT symbol located a minimum of 1 inch (2.5 cm) and a maximum of 3 inches (7.6 cm) from the bottom edge of the posterior portion of the helmet.

* * * * *

S6.4.1 Immediately before conducting the testing sequence specified in S7, condition each test helmet in accordance with any one of the following procedures:

(a) *Ambient conditions.* Expose to any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) and any relative humidity from 30 to and including 70 percent for a minimum of 4 hours.

(b) *Low temperature.* Expose to any temperature from 5 °F to and including 23 °F (from −15 °C to and including −5 °C) for a minimum of 4 hours and no more than 24 hours.

(c) *High temperature.* Expose to any temperature from 113 °F to and including 131 °F (from 45 °C to and including 55 °C) for a minimum of 4 hours and no more than 24 hours.

(d) *Water immersion.* Immerse in water at any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) for a minimum of 4 hours and no more than 24 hours.

* * * * *

S7.1.2 Each helmet is impacted at four sites with two successive impacts at each site. Two of these sites are impacted upon a flat steel anvil and two upon a hemispherical steel anvil as specified in S7.1.10 and S7.1.11. The impact sites are at any point on the area above the test line described in paragraph S6.2.3, and separated by a distance not less than one-sixth of the maximum circumference of the helmet in the test area. For each site, the location where the helmet first contacts the anvil on the second impact shall not be greater than 0.75 inch (1.9 cm) from the location where the helmet first contacts the anvil on the first impact.

* * * * *

S7.1.4(a) The guided free fall drop height for the helmet and test headform combination onto the hemispherical anvil shall be such that the impact speed is any speed from 16.4 ft/s to and including 17.7 ft/s (from 5.0 m/s to and including 5.4 m/s).

(b) The guided free fall drop height for the helmet and test headform combination onto the flat anvil shall be such that the impact speed is any speed from 19.0 ft/s to and including 20.3 ft/s (from 5.8 m/s to and including 6.2 m/s).

* * * * *

S7.1.9 The acceleration transducer is mounted at the center of gravity of the test headform with the sensitive axis aligned to within 5° of vertical when the test headform assembly is in the data impact position. The acceleration data channel complies with the SAE Recommended Practice J211/1, revised March 1995 (incorporated by reference, see § 571.5) requirements for channel class 1,000."

* * * * *

S7.2.4 The height of the guided free fall is 118.1 ± 0.6 in (3 ± 0.015 m), as measured from the striker point to the impact point on the outer surface of the test helmet.

* * * * *

S7.2.6 The weight of the penetration striker is not less than 6 pounds, 8 ounces and not more than 6 pounds, 12 ounces (2.95 to 3.06 kg).

S7.2.7 The point of the striker has an included angle of 60 ± 0.5°, a cone height of 1.5 ± 0.015 in. (3.8 ± 0.038 cm), a tip radius of 0.02 ± 0.004 in. (0.5 ± 0.1 mm), and a minimum hardness of 60 Rockwell, C-scale.

* * * * *

S7.3.1 The retention system test is conducted by applying a quasi-static tensile load at any rate from 0.4 to and including 1.2 inch/min (from 1.0 to and including 3.0 cm/min) to the retention assembly of a complete helmet, which is mounted, as described in S6.3, on a stationary test headform as shown in Figure 4, and by measuring the movement of the adjustable portion of the retention system test device under tension.

S7.3.2 The retention system test device consists of both an adjustable loading mechanism by which a quasi-static tensile load is applied at any rate from 0.4 to and including 1.2 inch/min (from 1.0 to and including 3.0 cm/min) to the helmet retention assembly and a means for holding the test headform and helmet stationary. The retention assembly is fastened around two freely moving rollers, both of which have a 0.5 inch (1.3 cm) diameter and a 3 inch (7.6 cm) center-to-center separation, and which are mounted on the adjustable portion of the tensile loading device (Figure 4). The helmet is fixed on the test headform as necessary to ensure that it does not move during the application of the test loads to the retention assembly.

* * * * *

TABLE 1—WEIGHT RANGES FOR IMPACT ATTENUATION TEST DROP ASSEMBLY

Test headform size	Weight range [1]—lb kg)
Small	7.6–8.0 (3.4–3.6)
Medium	10.8–11.2 (4.9–5.1)
Large	13.2–13.6 (6.0–6.2)

[1] Combined weight of instrumented test headform and supporting assembly for drop test.

* * * * *

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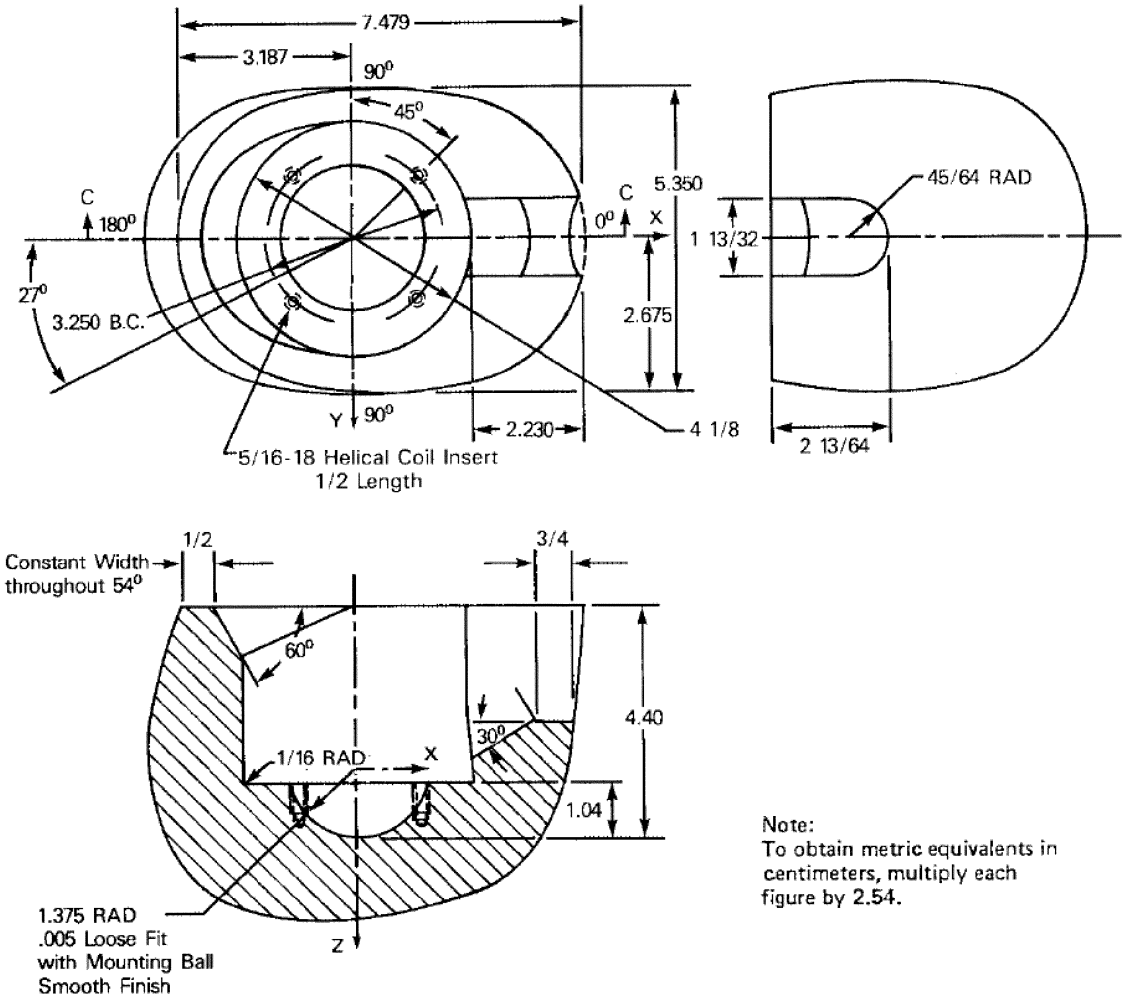
Figure 7

Medium Headform – Interior Design



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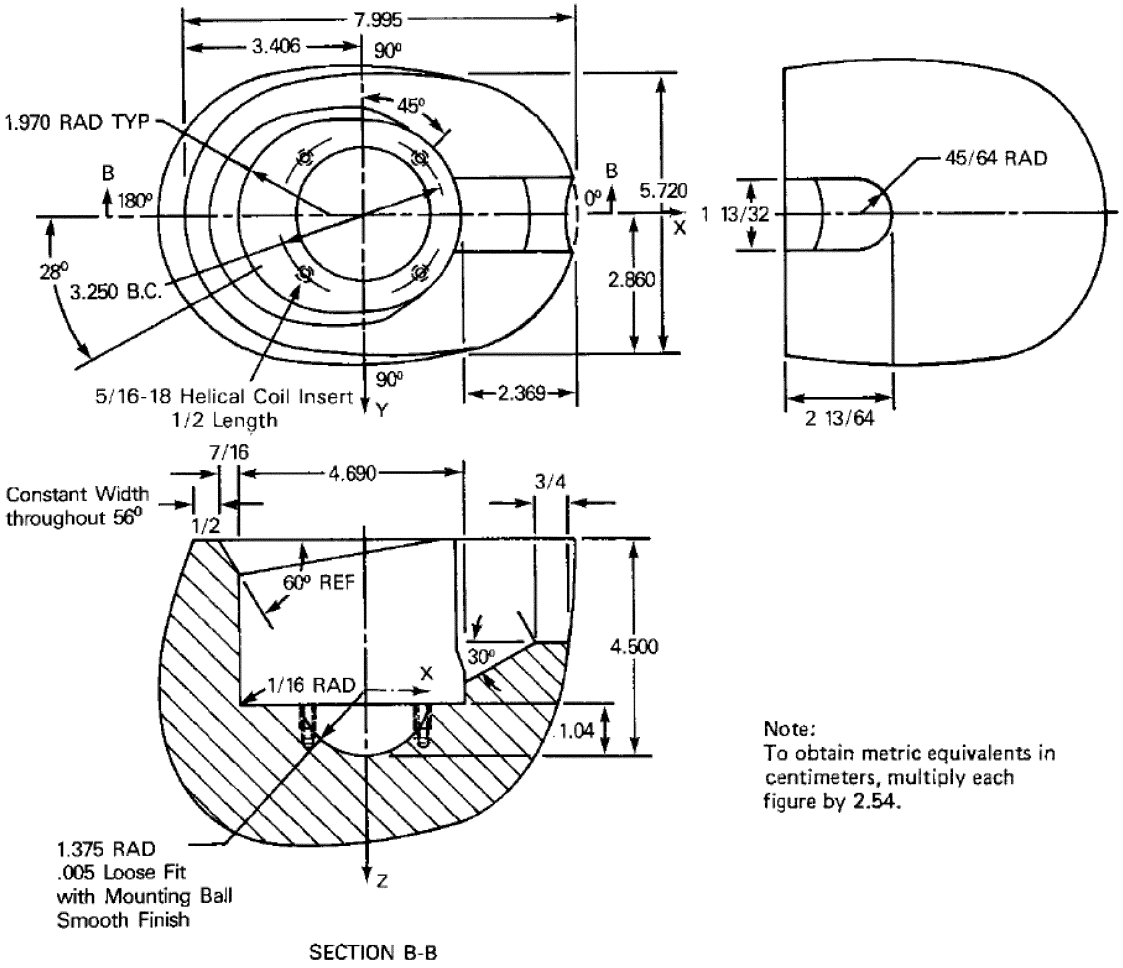
Note:
To obtain metric equivalents in centimeters, multiply each figure by 2.54.

Figure 8

Large Headform – Interior Design



Issued: May 3, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–11367 Filed 5–12–11; 8:45 am]

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S. 307/P.L. 112–11
To designate the Federal building and United States courthouse located at 217 West King Street, Martinsburg, West Virginia, as the ''W. Craig Broadwater Federal Building and United States Courthouse''. (Apr. 25, 2011; 125 Stat. 213)

S.J. Res. 8/P.L. 112–12
Providing for the appointment of Stephen M. Case as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 25, 2011; 125 Stat. 214)

Last List April 19, 2011

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