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Monday, July 25, 2011

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM454 Special Conditions No. 25–441–SC]

Special Conditions: Gulfstream Model GVI Airplane; Limit Engine Torque Loads for Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Gulfstream GVI airplane. This airplane has novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include engine size and the potential torque load imposed by sudden engine stoppage. These special conditions pertain to their effects on the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2279; electronic mail *Carl.Niedermeyer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as ''Gulfstream'') applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as ''the GVI'') meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The GVI will have high bypass engines. Engines of this size, configuration, and failure modes were not envisioned when § 25.361, which addresses loads imposed by engine seizure, was adopted in 1965. Worst case engine seizure events have become increasingly more severe with increasing engine size because of the higher inertia of the rotating components. The GVI engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards.

Discussion of Special Conditions

Section 25.361(b)(1) requires that for turbine engine installations, the engine mounts and the supporting structures must be designed to withstand a ''limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.'' Limit loads are expected to occur about once in the lifetime of any airplane. Section 25.305 requires that supporting structures be able to support limit loads without detrimental permanent deformation, meaning that supporting structures should remain serviceable after a limit load event.

Since adoption of § 25.361(b)(1), the size, configuration, and failure modes of jet engines have changed considerably. Current engines are much larger and are designed with large bypass fans. In the event of a structural failure, these engines are capable of producing much higher transient loads on the engine mounts and supporting structures.

As a result, modern high bypass engines are subject to certain rare-but-severe engine seizure events. Service history shows that such events occur far less frequently than limit load events. Although it is important for the airplane to be able to support such rare loads safely without failure, it is unrealistic to expect that no permanent deformation will occur.

Given this situation, the Aviation Rulemaking Advisory Committee (ARAC) has proposed a design standard for today's large engines. For the commonly-occurring deceleration events, the proposed standard would require engine mounts and structures to support maximum torques without detrimental permanent deformation. For the rare-but-severe engine seizure events such as loss of any fan, compressor, or

turbine blade, the proposed standard would require engine mounts and structures to support maximum torques without failure, but allows for some deformation in the structure.

The FAA concludes that modern large engines, including those on the GVI, are novel and unusual compared to those envisioned when § 25.361(b)(1) was adopted and thus warrant special conditions. The special conditions contain design criteria recommended by ARAC. The special conditions also clarify the design criteria that apply to auxiliary power units.

Discussion of Comments

Notice of proposed special conditions No. 25–11–11–SC for Gulfstream GVI airplanes was published in the **Federal Register** on May 5, 2011 (76 FR 25648). One supportive comment was received and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream GVI airplanes.

The following special conditions are in lieu of § 25.361(b):

1. For turbine engine installations, the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(a) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust; and

(b) The maximum acceleration of the engine.

2. For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(a) Sudden auxiliary power unit deceleration due to malfunction or structural failure; and

(b) The maximum acceleration of the power unit.

3. For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from:

(a) The loss of any fan, compressor, or turbine blade; and

(b) Separately, where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3(a) and 3(b) are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. Any permanent deformation that results from the conditions specified in paragraph 3 must not prevent continued safe flight and landing.

Issued in Renton, Washington, on July 18, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–18654 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM456; Special Conditions No. 25–442–SC]

Special Conditions: Boeing Model 747–8 Series Airplanes; Overhead Flight Attendant Rest Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 747–8 series airplanes. These airplanes will have novel or unusual design features associated with the installation of an overhead flight attendant rest compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of Boeing 747–8 airplanes.

DATES: *Effective Date:* August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2194; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2005, The Boeing Company, P.O. Box 3707, Seattle, WA 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane. Boeing later applied for, and was granted, an extension of time for the amended type certificate, which changed the effective application date to December 31, 2006. The Model 747–8 is a derivative of the 747–400. The Model 747–8 is a four-engine jet transport airplane that will have a maximum takeoff weight of 975,000 pounds and new General Electric GEnx–2B67 engines. The Model 747–8 will have two flight crew and the capacity to carry 605 passengers.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 747–8 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–120, plus amendment 25–127 for § 25.795(a), except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these airplanes. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–8 because of a novel or unusual design feature, special

conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747–8 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model or series that incorporates the same or similar novel or unusual design feature, or should any other model or series already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model or series under § 21.101.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that installing an overhead flight attendant rest (OFAR) compartment creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the OFAR compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of an OFAR compartment. Compliance with the environmental regulations (§§ 25.831, 25.832, and 25.841) must be demonstrated for all phases of flight when occupants are present.

Novel or Unusual Design Features

While the installation of an OFAR compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Crew rest compartments have been installed and certified in the main passenger cabin area of Model 777–200 and –300 series airplanes and the overhead area of the passenger compartment of Model 777–200 airplanes. Other crew rest compartments have been installed below the passenger cabin area adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on Model 747 series airplanes. The modification is evaluated with respect to the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all of the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this OFAR compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Operational Evaluations and Approval

These special conditions outline requirements for overhead crew rest compartment design approvals, including the OFAR compartment, (i.e., type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service.

Procedures must be developed to assure that a crewmember entering the OFAR compartment through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the OFAR compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit. In the event a fire source is not immediately self-evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the primary exit first, then proceed to check areas in such a manner that the fire source, when found, would not be between the firefighter and the primary exit. Procedures describing methods to search the overhead crew rests for fire source(s) must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

Discussion of the Special Conditions

In general, the requirements listed in these special conditions are similar to those previously approved in earlier certification programs, such as the Model 777–200 series airplanes and Model 747 overhead crew rest compartments. These special conditions establish seating, communication, lighting, personal safety, and evacuation requirements for the OFAR compartment. In addition, passenger information signs, supplemental oxygen, and a seat or berth for each occupant of the OFAR compartment are required. These items are necessary because of turbulence and/or decompression. When applicable, the requirements parallel the existing requirements for a lower deck service compartment and provide an equivalent level of safety to that provided for main deck occupants.

On Model 777 series airplanes, crew rest compartments have been installed and certified in the main passenger cabin area, above the main passenger area, and below the passenger cabin area adjacent to the cargo compartment. Also, overhead crew rest compartments have been installed on Model 747 series airplanes.

The FAA issued special conditions that contain the additional safety standards that must be met for the OFAR compartments on Boeing Model 747 and 777 series airplanes. FAA Special Condition 25–ANM–16 was issued in 1987 to provide adequate safety standards for the 747–300 and 747–400 Door 5 Overhead Crew Rests, and amended in 1997 (25–ANM–16A) to address design changes in the 747–400 Door 5 Overhead Crew Rest. For Boeing Model 777 series airplanes, the FAA issued Special Conditions No. 25–230–SC, dated April 9, 2003, for overhead crew rest compartments allowed to be occupied during flight and Special Conditions No. 25–260–SC, dated April 14, 2004, for overhead flight crew rest (OFCR) compartments allowed to be occupied during taxi, take-off, and landing, as well as during flight.

Special Condition No. 1

This special condition requires the seats and berths to be certified to the maximum flight loads. Due to the location and configuration of the OFAR compartment, occupancy during taxi, take-off, and landing is prohibited, and occupancy is limited to crewmembers during flight. Occupancy would be limited to 12 in an OFAR compartment, or the combined total of approved seats and berths in the OFAR, whichever is less. This special condition has the requirements for:

- Door access and locking,
- Ashtray installation,
- Placards to prohibit passenger access,
- Access by crewmembers not trained in evacuation procedures,
- Smoking, and
- Hazardous quantities of flammable fluids, explosives, or other dangerous cargo.

The phrase ''hazardous quantities'' as used in this special condition permits trained crewmembers to continue to carry baggage containing minute quantities of flammable fluids (*e.g.,* finger nail polish and aerosol hairspray) that would pose no threat to the airplane or its occupants. This wording is consistent with the existing wording of §§ 25.831(d), 25.855(h)(2),

25.857(b)(2), 25.857(c)(3), and 25.1353(c)(3).

Special Condition No. 2

The purpose of this special condition is to prevent occupants from being trapped in the OFAR compartment if there is an emergency. The special condition requires at least two emergency evacuation routes that could be used by each occupant of the OFAR compartment to rapidly evacuate to the main cabin. These two routes must be sufficiently separated to minimize the possibility of an event rendering both routes inoperative. The main entry route meeting the appropriate requirements may be utilized as one of the emergency evacuation routes, or, as an alternative, two other emergency routes must be provided. The intent of Special Condition No. 2(b) is to ensure that one of the two routes would be clear of moving occupants under most foreseeable circumstances.

Special Condition No. 2(b) identifies the three issues that should be considered for egress routes. First, occupied passenger seats are not considered an impediment to the use of an egress route (for example, the egress route drops into one row of seats by means of a hatch) provided that the seated occupants do not inhibit the opening of the egress route (for example, a hatch).

Second, an egress route may utilize areas where normal movement of passengers occurs if it is demonstrated that the passengers would not impede egress to the main deck. If the egress means (a hatch in this design) opens into a main aisle, cross aisle, or galley complex to an extent that it contacts a standing ninety-fifth percentile male, then the contact should only momentarily interrupt the opening of the egress hatch. The interruption to the egress means can be considered momentary if the egress means would continue to open normally once the person has moved out of the way.

Third, the escape hatch should be provided with a means to prevent it from being inadvertently closed by a passenger on the main deck. This will ensure main deck passengers can not prevent the overhead crew rest occupants from using the escape route. The crew should be able to stow the escape hatch prior to landing.

Training requirements for the OFAR compartment occupants are included in this special condition.

To clarify how compliance can be shown to Special Condition No. 2(a) new qualitative and quantitative criteria have been added to this special condition since the issuance of Special Conditions No. 25–192–SC.

Special Condition No. 3

This special condition requires each evacuation route to be designed for and have procedures established for moving an incapacitated person from the OFAR compartment to the main deck. Additional assistants to evacuate an incapacitated person may ascend up to one half the elevation change from the main deck to the OFAR compartment, or to the first landing, whichever is lower. Where the escape route is over seats, this special condition allows for five passenger seats to be emptied when demonstrating evacuation of an incapacitated person.

Special Condition No. 4

This special condition requires exit signs; placards for evacuation routes; and illumination for signs, placards, and door handles. This special condition allows the use of exit signs with a reduced background area. The material surrounding the sign must be light in color to more closely match and enhance the illuminated background of the sign that has been reduced in area (letter size stays the same). Signs with a reduced background area have been allowed under previous equivalent level of safety findings for small transport executive jets.

Special Condition No. 5

This special condition requires an emergency lighting system to prevent the occupants from being isolated in a dark area due to loss of the normal OFAR compartment lighting. The emergency lighting must be activated under the same conditions as the main deck emergency lighting system.

Special Condition No. 6

This special condition requires a two-way voice communication and public address speaker(s) to alert the occupants of an in-flight emergency. Also required is a system to alert the OFAR compartment occupants of a decompression event and to don oxygen masks.

Special Condition No. 7

This special condition requires a means to inform occupants of the OFAR compartment of an emergency. Also, after certain failures, power must be maintained to the emergency alarm system for a specific period of time.

Special Condition No. 8

This special condition requires a means that is readily detectable by seated or standing OFAR compartment occupants to indicate when seat belts should be fastened. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the OFAR compartment. It would not be essential that the sign be visible from every possible location in the OFAR compartment. However, the sign should not be remotely located or located where it may be easily obscured.

Special Condition No. 9

This special condition requires the OFAR compartment, which is remotely located from the passenger cabin, to be equipped with the following tools for firefighting: a hand-held fire extinguisher, protective breathing equipment (PBE), and a flashlight.

This requirement has been modified from previously issued Special Conditions No. 25–192–SC to clarify how it should be interpreted relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding, ''In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.'' The requirements of § 25.1439(a) apply to the OFAR compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the OFAR compartment is novel and unusual in terms of the number of occupants. In 1976 when Amendment 25–38 was adopted, underfloor galleys were the only isolated compartments that had been certificated with a maximum of two crewmembers expected to occupy those galleys. Special Condition No. 9 addresses OFAR compartments that can accommodate up to 12 crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted. In the event of a fire, an occupant's first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all OFAR compartment occupants to don PBE. Taking the time to don the PBE would prolong the time for an occupant's emergency evacuation and possibly interfere with efforts to extinguish the fire.

Special Condition No. 10

This special condition requires a smoke detection system and appropriate warnings since the OFAR compartment is remotely located from the main passenger cabin and will not always be occupied. The smoke detection system must be capable of detecting a fire throughout the OFAR including occupiable areas of the compartment created by the installation of a curtain or door.

Special Condition No. 11

This special condition requires the OFAR compartment to be designed so fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, don firefighting equipment, and gain access must not exceed the time for the OFAR compartment to become smoke filled, making it difficult to locate the fire source.

Special Condition No. 12

This special condition requirement concerning fires within the compartment was developed for, and applied to, lower lobe crew rest compartments in Model 777–200 and –300 series airplanes. It was not applied to the overhead crew rest compartment in earlier certification programs such as the Model 747 airplanes. The Model 747 special conditions were issued before the new part 25 flammability requirements were developed. This requirement originated from a concern that a fire in an unoccupied overhead crew rest compartment could spread into the passenger compartment, or affect other vital systems, before it could be extinguished. This special condition would require either the installation of a manually activated fire containment system that is accessible from outside the OFAR compartment, or a demonstration that the crew could satisfactorily perform the function of extinguishing a fire under the prescribed conditions. A manually activated built-in fire extinguishing system would be required only if a crewmember could not successfully locate and extinguish the fire during a demonstration where the crewmember is responding to the alarm.

The OFAR compartment smoke or fire detection and fire suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, *System Design and Analysis*. In addition, the FAA considers failure of the OFAR compartment fire protection system (i.e., smoke or fire detection and fire suppression systems) in conjunction with an OFAR fire to be a catastrophic event. Based on the ''Depth of Analysis Flowchart'' shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the OFAR compartment, a prohibition addressed in Special Condition No. 1(a)(5).

The requirements to enable crewmember(s) to quickly enter the OFAR compartment and locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the OFAR compartment. The OFAR compartment is limited to stowing crew personal luggage and is not intended for stowing cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

During the one-minute smoke detection time, penetration of a small quantity of smoke from the OFAR compartment into an occupied area is acceptable for this airplane configuration. The FAA finds this acceptable based on the limitations placed in this and other associated special conditions. The FAA position is predicated on the fact that these special conditions place sufficient restrictions on the quantity and type of material allowed in crew carry-on bags that the threat from a fire in this remote area would be equivalent to that experienced in the main cabin.

Special Condition No. 13

This special condition requires that the oxygen equipment and a supplemental oxygen deployment warning for the OFAR compartment be equivalent to that provided for main deck passengers. Procedures must be established for OFAR compartment occupants to follow in the event of decompression.

Special Condition No. 14

This special condition has the requirements for a divided OFAR compartment to address supplemental oxygen equipment and deployment means, signs, placards, curtains, doors, emergency illumination, alarms, seat belt fasten signals, and evacuation routes.

The wording in Special Condition No. 14(a) was modified from previously issued special conditions to clarify that oxygen masks are not required in common areas where seats or berths are not installed. A visual indicator to don oxygen masks is required in these areas. The visual indicator is in addition to the aural alert for donning oxygen masks.

Special Condition No. 15

For lavatories or other small areas within an OFAR compartment, this special condition eliminates the requirements for flight deck communication as required by Special Condition No. 6, and emergency fire fighting and protective equipment as required by Special Condition No. 9.

Special Condition No. 16

This special condition requires a fitted waste disposal receptacle to be equipped with an automatic fire extinguisher.

Special Condition No. 17

This special condition requires the materials in the OFAR compartment to meet the flammability requirements of § 25.853(a), and the mattresses and seat cushions to meet the fire blocking requirements of § 25.853(c).

Special Condition No. 18

To clarify the applicability, this special condition reiterates the existing requirements for the main deck lavatory. OFAR compartment lavatories are required to comply with the existing rules on lavatories in the absence of other specific requirements. In addition, any lavatory located in the OFAR compartment must also meet the requirements of Special Condition No. 10 for smoke detection due to its placement in this remote area.

Special Condition No. 19

This special condition requires establishing fire protection procedures for the OFAR compartment based on the size of the compartment (compartment interior volume). This special condition has been revised from previously issued special conditions for other model airplanes because of the introduction of larger stowage compartments into the OFAR compartment. The fire protection requirements for stowage compartments in the OFAR compartment are more stringent than those for stowage in the main passenger cabin because the OFAR compartment is a remote area that can

remain unoccupied for long periods of time in contrast to the main cabin that is under continuous monitoring by the cabin crew and passengers. For stowage compartments less than 25 ft^3 the safety objective of these requirements is to contain the fire. FAA research indicates that properly constructed compartments meeting the material requirements will prevent burn through. For stowage compartments greater than 25 ft^3 but less than 200 ft^3 the safety objective is to detect and contain the fire for sufficient time to allow it to be extinguished by the crew. The requirements for these sizes of compartments are comparable to the requirements for Class B cargo compartments. The fire protection requirements are intended to provide a level of safety for the OFAR compartment that is equivalent to the level of safety established by the existing regulations for the main cabin.

These special conditions along with the original type certification basis provide the regulatory requirements necessary for certification of this modification. Other special conditions may be developed, as needed, based on further FAA review and discussions with the applicant, manufacturer, and civil aviation authorities.

The addition of galley equipment or a kitchenette incorporating a heat source (e.g., cook tops, microwaves, or coffee pots), other than a conventional lavatory or kitchenette hot water heater, within the OFAR compartment, may require additional special conditions. A hot water heater is acceptable and will not require issuing additional special conditions.

The OFAR compartment on the 747–8 series airplanes is located above the main passenger cabin adjacent to Door 5 and will be accessed from the main deck by stairs. The OFAR compartment will include a maximum of 10 berths and a bench style seat for a maximum occupancy of 12. An emergency hatch that opens directly into the main passenger cabin area will be provided. A smoke detection system, an oxygen system with audio warning, emergency backup lighting, information signs, and occupant amenities will also be provided. Additionally, the OFAR compartment will only be occupied by trained crew members in flight, not during taxi, take-off, or landing.

Discussion of Comments

Notice of proposed special conditions No. 25–11–13–SC for Boeing Model 747–8 airplanes was published in the **Federal Register** on May 10, 2011 (76 FR 26949). No comments were received and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 747–8 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of Boeing Model 747–8 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747–8 airplanes.

1. Occupancy of the overhead flight attendant rest (OFAR) compartment is limited to the total number of bunks and seats installed in that compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the OFAR compartment. The maximum occupancy is 12.

(a) Appropriate placards must be located inside and outside each entrance to the OFAR compartment to indicate:

(1) The maximum number of occupants allowed.

(2) Occupancy is restricted to crewmembers that are trained in the evacuation procedures for the overhead crew rest compartment.

(3) Occupancy is prohibited during taxi, take-off and landing.

(4) Smoking is prohibited in the OFAR compartment.

(5) Stowage in the OFAR compartment area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

(b) At least one ashtray must be located on both the inside and the outside of any entrance to the OFAR compartment.

(c) Passengers must be prevented from entering the OFAR compartment in the event of an emergency or when no flight attendant is present.

(d) Any door installed between the OFAR compartment and passenger cabin must be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed in the OFAR compartment, a means must be in place to preclude anyone from being trapped inside the OFAR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the OFAR compartment at any time.

2. At least two emergency evacuation routes must be available which could be used by each occupant of the OFAR compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OFAR compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

Compliance with the requirements of Special Condition No. 2(a) may be shown by inspection or analysis. Regardless of which method is used, the maximum acceptable distance between exit openings is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with Special Condition No. 2(a). An inspection finding that an OFAR compartment has evacuation routes located such that each occupant of the seats and berths has an unobstructed route to at least one of the evacuation routes regardless of the location of a fire would be reason for a finding of compliance. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, exits which are located at opposite ends (i.e., adjacent to opposite end walls) of the OFAR would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show that the OFAR compartment configuration and interior features allow all occupants of the OFAR to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are:

(1) Fire inside or outside the OFAR compartment, considered separately,

and the design elements used to reduce the available fuel for the fire.

(2) Design elements to reduce the fire ignition sources in the OFAR compartment.

(3) Distribution and quantity of emergency equipment within the OFAR compartment.

(4) Structural failure or deformation of components that could block access to the available evacuation routes (e.g., seats, folding berths, and contents of stowage compartments).

(5) An incapacitated person blocking the evacuation routes.

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. The design features that should be considered include, but are not limited to,

○ Seat back break over,

○ The elimination of rigid structure that reduces access from one part of the compartment to another,

○ The elimination of items that are known to cause hazards,

○ The availability of emergency equipment to address fire hazards,

○ The availability of communications equipment,

○ Supplemental restraint devices to retain items of mass that could hinder evacuation if broken loose, and

○ Load path isolation between components that contain the evacuation routes.

Analysis of the fire threats should be used in determining the placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should take into consideration the possibility of fire in any location in the OFAR compartment. The location and quantity of PBE and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OFAR compartment.

The intent of this special condition is to provide sufficient exit separation. The exit separation analysis described above should not be used to approve exits which have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For OFAR compartments with one exit located near the forward or aft end of an OFAR compartment (as measured by having the centroid of the exit opening within 20 percent of the total OFAR compartment length from the forward or aft end of the compartment) the exit separation should not be less than 50 percent of the total OFAR compartment length.

For OFAR compartments with neither required exit located near the forward or aft end of the OFAR compartment (as measured by having the centroid of the exit opening within 20 percent of the total OFAR compartment length from the forward or aft end of the compartment) the exit separation should not be less than 30 percent of the total OFAR compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times when occupancy is allowed, normal movement by passengers occurs (*i.e.,* main aisle, cross aisle or galley complex) that would impede egress from the OFAR compartment. If an evacuation route is in an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants of the OFAR compartment from head injury. The use of evacuation routes must not depend on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of five passengers may be temporarily displaced from their seats when evacuating an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including procedures for emergency evacuation of an incapacitated occupant from the OFAR compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

(d) A limitation must be included in the airplane flight manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for evacuating an incapacitated person (representative of a ninety-fifth percentile male) from the OFAR compartment to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the OFAR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes with stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFAR compartment, or to the first landing, whichever is lower.

4. The following signs and placards must be provided in the OFAR compartment:

(a) At least one exit sign, located near each exit, meeting the emergency lighting requirements of § 25.812(b)(1)(i); however, a sign with a reduced background area of no less than 5.3 square inches (excluding the letters) may be used, provided it is installed so the material surrounding the exit sign is light in color (e.g., white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters is acceptable.

(b) An appropriate placard located conspicuously on or near each exit defining the location and operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The evacuation path operating instruction placards required by Special Condition 4(b) of these special conditions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. A means must be available, in the event of failure of the airplane's main power system, or of the normal OFAR compartment lighting system, for emergency illumination to be automatically provided in the OFAR compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the OFAR compartment to locate and move to the main passenger cabin floor by means of each evacuation route.

6. A means must be available for two-way voice communications between crewmembers on the flight deck and occupants of the OFAR compartment.

Two-way voice communications must also be available between the occupants of the OFAR compartment and each flight attendant station in the passenger cabin that is required to have a public address system microphone per § 25.1423(g). In addition, the public address system must include provisions to provide only the relevant information to the flight attendants in the OFAR compartment (e.g., fire in flight, airplane depressurization, or preparation of the compartment occupants for landing).

7. A means must be available for manually activating an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the OFAR compartment of an emergency situation. Use of a public address or crew interphone system is acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight for at least 10 minutes after the shutdown or failure of all engines and auxiliary power units.

8. A means, readily detectable by seated or standing occupants of the OFAR compartment, must be in place to indicate when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (e.g., sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible with the sleeping position during cruise conditions. There must be a placard on each berth requiring seat belts to be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on a specific head position, there must be a placard identifying that head position.

9. In lieu of the requirements specified in § 25.1439(a) pertaining to isolated compartments, and to provide a level of safety equivalent to that provided to occupants of an isolated galley, the following equipment must be provided in the OFAR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(b) Two PBE devices suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. All PBE devices must be approved to Technical Standard Order (TSO)-C116, *Crewmember Portable Protective Breathing Equipment,* or equivalent.

(c) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition No. 9, may be required as a result of the egress analysis accomplished to satisfy Special Condition No. 2(a).

10. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the OFAR compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. If a fire occurs, each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire.

(b) An aural warning in the OFAR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. A means to fight a fire must be provided. This can be either a built-in extinguishing system or manual, hand-held bottle extinguishing system.

(a) For a built-in extinguishing system:

(1) The system must have adequate capacity to suppress a fire considering the fire threat, compartment volume, and ventilation rate. The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards established for the agent being used.

(2) If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For a built-in extinguishing system, the time needed for effective fire suppression must be established and documented in the firefighting procedures of the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

(i) Enter the OFAR compartment at the time that demonstrated fire suppression effectiveness will be exceeded.

(ii) Check for and extinguish any residual fire.

(iii) Confirm that the fire is out.

(b) For a manual, hand-held bottle extinguishing system (designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited suppression duration) for the OFAR compartment:

(1) A limitation must be included in the airplane flight manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

(2) The compartment design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the compartment.

(3) The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the OFAR compartment must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

(4) Approved procedures describing methods for searching the OFAR compartment for fire source(s) must be established. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

12. A means must be provided to prevent hazardous quantities of smoke or extinguishing agent originating in the OFAR compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the OFAR compartment and, if applicable, accessing the OFAR compartment to manually fight a fire. When access to the OFAR compartment is open for emergency evacuation all smoke entering any other compartment occupied by crewmembers or passengers must dissipate within five minutes after access to the OFAR compartment is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during access to manually fight a fire in the OFAR compartment. The amount of smoke entrained by a firefighter exiting the OFAR compartment is not considered hazardous. During the one-minute smoke detection time, penetration of a small quantity of smoke from the OFAR into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

(a) A provision in the firefighting procedures must ensure that all door(s) and hatch(es) at the OFAR compartment outlets are closed after the compartment is evacuated and during firefighting to minimize smoke and extinguishing agent from entering other occupiable compartments.

(b) If a built-in fire extinguishing system is used in lieu of manual firefighting, the fire extinguishing

system must be designed so no hazardous quantities of extinguishing agent enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the OFAR compartment, considering the fire threat, compartment volume, and ventilation rate.

13. There must be a supplemental oxygen system for each seat and berth in the OFAR compartment equivalent to that provided for main deck passengers. The system must provide an aural and visual alert to warn occupants of the OFAR compartment to don oxygen masks in the event of decompression. The aural and visual alerts must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the OFAR compartment is depressed. Procedures must be established for instructing OFAR compartment occupants what to do in the event of decompression. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

14. The following requirements apply to OFAR compartments divided into several sections by installing curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the OFAR compartment that accompanies automatic presentation of supplemental oxygen masks. A visual alert that informs occupants that they must don oxygen masks is required in each section where seats or berths are not installed. Each seat or berth must have at least two supplemental oxygen masks. A means must be in place by which oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OFAR compartment into multiple sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private section and, therefore, does not require a placard.

(c) For each section of the OFAR compartment created by the installation of a curtain, the following requirements must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1).

(2) Emergency illumination (Special Condition No. 5).

(3) Emergency alarm system (Special Condition No. 7).

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8).

(5) A smoke or fire detection system (Special Condition No. 10).

(d) OFAR compartments that are visually divided to the extent that evacuation could be affected must have exit signs directing occupants to the primary stairway exit. The exit signs must be provided in each separate section of the OFAR compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an OFAR compartment created by installing a rigid partition with a door physically separating the sections, must meet the following requirements with the door open or closed:

(1) A secondary evacuation route from each section to the main deck, or the applicant must show that any door between the sections precludes anyone from being trapped inside the compartment. Removing an incapacitated occupant from this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short period of time, such as a changing area or lavatory, is not required. However, removing an incapacitated occupant from a small room, such as a changing area or lavatory, must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) No more than one door may be located between any seat or berth and the primary stairway exit.

(4) Each section must have exit signs that meet the requirements of § 25.812(b)(1)(i) and direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each section of the OFAR compartment created by the installation of a partition with a door, the following requirements must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1).

(2) Emergency illumination (Special Condition No. 5).

(3) Two-way voice communication (Special Condition No. 6).

(4) Emergency alarm system (Special Condition No. 7).

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8).

(6) Emergency firefighting and protective equipment (Special Condition No. 9).

(7) Smoke or fire detection system (Special Condition No. 10).

15. Special Conditions 6 (two-way voice communication with the flight deck) and 9 (emergency firefighting and protective equipment) are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. If a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a), as amended by Amendment 25–83. Mattresses and seat cushions must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

18. The addition of a lavatory within the OFAR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition No. 10 for smoke detection.

19. All enclosed stowage compartments within the OFAR compartment that are not limited to stowage of emergency equipment or airplane supplied equipment (e.g., bedding) must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this special condition. The in-flight accessibility of very large, enclosed, stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand-held fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments, such as Class C cargo compartments.

DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT

Fire protection features	Stowage compartment interior volumes		
	Less than 25 cubic feet	25 cubic feet to 57 cubic feet	57 cubic feet to 200 cubic feet
Materials of Construction [1]	Yes	Yes	Yes.
Detectors [2]	No	Yes	Yes.
Liner [3]	No	Conditional	Yes.
Locating Device [4]	No	Yes	Yes.

[1] *Compliant Materials of Construction*
The material used in constructing each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (i.e., 14 CFR part 25 Appendix F, parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Smoke or Fire Detectors*
Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:
(a) A visual indication in the flight deck within one minute after the start of a fire.
(b) An aural warning in the OFAR compartment.
(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner*
If material used in constructing the stowage compartment can be shown to meet the flammability requirements of a liner for a Class B cargo compartment (i.e., § 25.855 at Amendment 25–93, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 in interior volume but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] *Fire Location Detector*
If an OFAR compartment has enclosed stowage compartments exceeding 25 ft^3 interior volume that are located separately from the other stowage compartments (for example, away from one central location, such as the entry to the OFAR compartment or a common area within the OFAR compartment) that compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on July 18, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–18668 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1327; Airspace Docket No. 10–ASW–19]

Amendment of Class D Airspace; Denton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace for Denton, TX, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Denton Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On May 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D airspace for Denton, TX, creating additional controlled airspace at Denton Municipal Airport (76 FR 28684) Docket No. FAA–2010–1327. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by creating additional Class D airspace for new standard instrument approach procedures at Denton Municipal Airport, Denton, TX. This action is necessary for the safety and management of IFR operations at the airport. The geographic coordinates of Denton Municipal Airport are also being updated to coincide with the FAA's aeronautical database. With the exception of this change, this action is the same as that published in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for Denton Municipal Airport, Denton, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASW TX D Denton, TX [Amended]

Denton Municipal Airport, TX
(Lat. 33°12′08″ N., long. 97°11′53″ W.)

That airspace extending upward from the surface up to but not including 2,500 feet MSL within a 4-mile radius of Denton Municipal Airport, and within 1 mile each side of the 001° bearing from the airport extending from the 4-mile radius to 4.2 miles north of the airport, and within 1 mile each side of the 181° bearing from the airport extending from the 4-mile radius to 4.2 miles south of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, Texas, on July 13, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–18167 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0251; Airspace Docket No. 11–ACE–5]

Amendment of Class E Airspace; Harrisonville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Harrisonville, MO, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Lawrence Smith Memorial Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On April 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Harrisonville, MO, creating additional controlled airspace at Lawrence Smith Memorial Airport (76 FR 21830) Docket No. FAA–2011–0251. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Lawrence Smith Memorial Airport, Harrisonville, MO. This action is necessary for the safety and management of IFR operations at the airport. Geographic coordinates are also being updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for Lawrence Smith Memorial Airport, Harrisonville, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE MO E5 Harrisonville, MO [Amended]

Lawrence Smith Memorial Airport, MO
(Lat. 38°36′37″ N., long. 94°20′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Lawrence Smith Memorial Airport, and within 1.9 miles each side of the 307° bearing from the airport extending from the 6.9-mile radius to 10.3 miles northwest of the airport.

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

Walter L. Tweedy,

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

[FR Doc. 2011–18121 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0213; Airspace Docket No. 11–ACE–4]

Amendment of Class E Airspace; El Dorado, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for El Dorado, KS. Decommissioning of the El Dorado non-directional beacon (NDB) at Captain Jack Thomas/El Dorado Airport, El Dorado, KS, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On April 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for El Dorado, KS, reconfiguring controlled airspace at Captain Jack Thomas/El Dorado Airport (76 FR 21827) Docket No. FAA–2011–0213. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the El Dorado, KS area. Decommissioning of the El Dorado NDB and cancellation of the NDB approach at Captain Jack Thomas/El Dorado Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport. Geographic coordinates are also being updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Captain Jack Thomas/El Dorado Airport, El Dorado, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE KS E5 El Dorado, KS [Amended]

Captain Jack Thomas/El Dorado Airport, KS
(Lat. 37°46′27″ N., long. 96°49′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Captain Jack Thomas/El Dorado Airport.

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

Walter L. Tweedy,

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

[FR Doc. 2011–18132 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1325; Airspace Docket No. 10–ASO–40]

Amendment of Class E Airspace; Orangeburg, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Orangeburg, SC, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures developed for Orangeburg Municipal Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also makes a minor adjustment to the geographic coordinates of the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On March 7, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Orange Municipal Airport, Orangeburg, SC (76 FR 12298) Docket No. FAA–2010–1325. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Orangeburg Municipal Airport, Orangeburg, SC. Airspace reconfiguration is necessary due to the decommissioning of the Orangeburg NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates for the airport are being adjusted to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Orangeburg, SC [Amended]

Orangeburg Municipal Airport, SC
(Lat. 33°27′39″ N., long. 80°51′32″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Orangeburg Municipal Airport.

Issued in College Park, Georgia, on July 11, 2011.

Mark D. Ward,

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

[FR Doc. 2011–18173 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0134; Airspace Docket No. 11–AGL–3]

Amendment of Class E Airspace; Mobridge, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Mobridge, SD, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Mobridge Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On April 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Mobridge, SD, creating additional controlled airspace at Mobridge Municipal Airport (76 FR 21828) Docket No. FAA–2011–0134. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Mobridge Municipal Airport, Mobridge, SD. This action is necessary for the safety and management of IFR operations at the airport. Geographic coordinates are also being updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for Mobridge Municipal Airport, Mobridge, SD.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL SD E5 Mobridge, SD [Amended]

Mobridge Municipal Airport, SD
(Lat. 45°32′47″ N., long. 100°24′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Mobridge Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°18′01″ N., long. 99°49′34″ W., to lat. 45°07′23″ N., long. 100°49′24″ W., to lat. 45°13′27″ N., long. 100°52′40″ W., to lat. 45°19′10″ N., long. 100°27′43″ W., to lat. 45°25′14″ N., long. 100°30′08″ W., to lat. 45°32′37″ N., long. 100°50′33″ W., to lat. 45°35′38″ N., long. 100°59′28″ W., to lat. 45°46′53″ N., long. 100°57′50″ W., to lat. 45°50′09″ N., long. 100°48′32″ W., to lat. 45°59′25″ N., long. 100°36′07″ W., to lat. 46°05′11″ N., long. 100°40′41″ W., to lat. 46°11′00″ N., long. 100°26′01″ W., to lat. 46°05′28″ N., long. 100°19′58″ W., to lat. 45°32′07″ N., long. 99°57′01″ W., to the point of beginning.

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

Walter L. Tweedy,

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

[FR Doc. 2011–18181 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0355; Airspace Docket No. 11–AEA–8]

Removal of Class D and E Airspace; Willow Grove, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class D and Class E airspace areas at Willow Grove, PA. The Willow Grove Naval Air Station (NAS) has closed and therefore controlled airspace associated with the airport is being removed. The FAA is taking this action to ensure the efficient use of airspace within the National Airspace System.

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

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 to remove Class D and E airspace at Willow Grove, PA. The closing of the Willow Grove NAS and cancellation of all standard instrument approach

procedures eliminates the need of controlled airspace. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of Willow Grove, PA, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, respectively, of FAA Order 7400.9U, dated August 15, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Willow Grove, PA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

AEA PA D Willow Grove, PA [Removed]

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

AEA PA E4 Willow Grove, PA [Removed]

Issued in College Park, Georgia, on July 15, 2011.

Mark D. Ward,

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

[FR Doc. 2011–18667 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 110502273–1368–01]

RIN 0694–AF21

Addition of Certain Persons on the Entity List: Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding six persons to the Entity List (Supplement No. 4 to Part 744) on the basis of section 744.11 of the EAR. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed under the following two destinations on the Entity List: Hong Kong and Lebanon.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, E-mail: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from BIS and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate,Treasury, makes all decisions regarding additions to, removals from, or other changes to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

This rule implements the decision of the ERC to add six persons to the Entity List on the basis of section 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The six entries added to the Entity List consist of two persons in Hong Kong and four persons in Lebanon.

The ERC reviewed section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy

interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to section 744.11. Paragraphs (b)(1)–(b)(5) include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

Pursuant to 15 CFR 744.11(b)(2) and 15 CFR 744.11(b)(5), the persons are being added to the Entity List based on evidence that they have engaged in actions that could enhance the military capability of Iran, a country designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism. These persons are also added because their overall conduct poses a risk of ongoing EAR violations. The six companies are added based on evidence that they purchased electronic components from U.S. firms and then resold the components to companies in Iran without the required U.S. export license. The same components were later found in Iraq in unexploded improvised explosive devices.

Additions to the Entity List

This rule adds six persons to the Entity List on the basis of section 744.11 of the EAR. For all of the six persons added to the Entity List, the ERC specifies a license requirement for all items subject to the EAR and establishes a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List. Specifically, this rule adds the following six persons to the Entity List:

Hong Kong

(1) *Biznest, LTD,* Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong; and

(2) *Yeraz, LTD,* Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong.

Lebanon

(1) *Micro Power Engineering Group,* a.k.a MPEG, Anwar Street, Abou Karam Building, 1st Floor, Jdeidet El Metn, Beirut, Lebanon;

(2) *Narinco Micro Sarl,* Dedeyan Center, Dora Boulevard Street, Bauchrieh Metn, Lebanon;

(3) *Serop Elmayan and Sons Lebanon,* Ground Floor, Aramouni Building, Property Number 1731, Fleuve Street, Mar Mekhael Sector, Beirut, Lebanon; and

(4) *Serpico Offshore Sarl*, Ground Floor, Aramouni Building, Property Number 1731, Fleuve Street, Mar Mekhael Sector, Beirut, Lebanon.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on July 25, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before August 9, 2011. Any such items not actually exported or reexported before midnight, on August 9, 2011, require a license in accordance with the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2010, 75 FR 50681 (August 16, 2010), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the Paperwork Reduction Act and Office of Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5

U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010): Notice of January 13, 2011, 76 FR 3009, January 18, 2011.

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding under Hong Kong, in alphabetical order, two Hong Kong entities; and

■ b. By adding under, Lebanon, in alphabetical order, four Lebanese entities.

The additions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
HONG KONG				
*	*	*	*	*
	Biznest, LTD, Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 7/25/11.
*	*	*	*	*
	Yeraz, LTD, Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 7/25/11.
*	*	*	*	*
LEBANON				
*	*	*	*	*
	Micro Power Engineering Group, a.k.a., MPEG, Anwar Street, Abou Karam Building, 1st Floor, Jdeidet El Metn, Beirut, Lebanon.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 7/25/11.
*	*	*	*	*
	Narinco Micro Sarl, Dedeyan Center, Dora Boulevard Street, Bauchrieh Metn. Lebanon.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 7/25/11.
	Serop Elmayan and Sons Lebanon, Ground Floor, Aramouni Building, Property Number 1731, Fleuve Street, Mar Mekhael Sector, Beirut, Lebanon.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 7/25/11.
	Serpico Offshore Sarl, Ground Floor, Aramouni Building, Property Number 1731 Fleuve Street, Mar Mekhael Sector, Beirut, Lebanon.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER], 7/25/11.
*	*	*	*	*

Dated: July 20, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–18718 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 4

RIN 3038–AD11

Removing Any Reference to or Reliance on Credit Ratings in Commission Regulations; Proposing Alternatives to the Use of Credit Ratings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting a final rule that amends existing CFTC regulations in order to implement new statutory provisions enacted by Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The rule amendments set forth herein apply to futures commission merchants (''FCMs''), derivatives clearing organizations (''DCOs''), and commodity pool operators (''CPOs''). The rule amendments implement the new statutory framework that requires agencies to replace any reference to or reliance on credit ratings in their regulations with an appropriate alternative standard.

DATES: This rule is effective September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Ward P. Griffin, Counsel, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: 202–418–5425. E-mail: *wgriffin@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] In relevant part, Title IX of the Dodd-Frank Act directs Federal agencies to take certain actions concerning any reference to—or requirement of reliance on—credit ratings in each agency's respective regulations. Specifically, section 939A of the Dodd-Frank Act requires agencies to take three actions by July 21, 2011, the one-year anniversary of the enactment of the Dodd-Frank Act. First, section 939A(a) directs each Federal agency to review ''any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument [and] any references to or requirements in such regulations regarding credit ratings.'' Second, section 939A(b) requires that each Federal agency ''modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' To the extent feasible, Federal agencies should ''seek to establish * * * uniform standards of credit-worthiness for use by each such agency.'' And third, section 939A(c) directs each Federal agency to report to Congress ''a description of any modification of any regulation such agency made pursuant to subsection (b).''

Subsequent to the enactment of the Dodd-Frank Act, the Commission reviewed its regulations and identified instances in which credit ratings were referred to or relied upon.[2] The identified regulations could be categorized into two groups: (1) those that rely on ratings to limit how Commission registrants may invest or deposit customer funds; and (2) those that require disclosing a credit rating to describe an investment's characteristics. In keeping with its efforts to comply fully with both the spirit and letter of the Dodd-Frank Act, the Commission proposed to amend all of the identified regulations that rely on credit ratings regarding financial instruments.

On November 2, 2010, the Commission published in the **Federal Register** proposed amendments to certain of its existing regulations (the ''Proposing Release'') in response to the directives set forth in section 939A of the Dodd-Frank Act.[3] Specifically, the Commission addressed two regulations in the Proposing Release: (1) Regulation 1.49, which places qualifications on the types of depositories where FCMs and DCOs might place customer funds; and (2) Regulation 4.24, wherein credit ratings are used to help disclose the characteristics of an investment.[4]

Regulation 1.49, which mirrors Regulation 30.7,[5] requires that an acceptable foreign depository must either: (1) Have in excess of $1 billion of regulatory capital; or (2) issue commercial paper or a long-term debt instrument that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization (''NRSRO''). In the Proposing Release, the Commission proposed to remove all ratings requirements from Regulation 1.49. The Commission based its proposal on its views regarding the uncertain reliability of ratings as currently administered, particularly in light of the significant weaknesses of the ratings industry that were revealed in recent years. The Commission noted the poor past performance of credit ratings in gauging the safety of certain types of investments, and its view that credit ratings are not necessary to gauge the future ability of certain types of investments to preserve customer funds. The proposal was intended to align Regulation 1.49 with proposed Regulations 1.25 and 30.7, and to greater simplify the regulatory treatment of the investment of customer funds.

With respect to the proposed amendment of Regulation 1.49, the Commission requested comment on: (1) Whether relying on a minimum capital requirement of $1 billion dollars in regulatory capital is an adequate alternative standard to the current Regulation 1.49; and (2) whether another standard or measure of solvency and credit-worthiness should be used as an appropriate, additional test of a bank's safety, such as a leverage ratio or a capital adequacy ratio requirement consistent with or similar to those in the Basel III accords. The Commission also stated that it would welcome any other comments on the proposal.

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Commission regulations that are referenced herein are found at 17 CFR Ch. 1 (2010). They are accessible on the Commission's Web site at *http://www.cftc.gov.*

[3] 75 FR 67254, Nov. 2, 2010.

[4] Separately, the Commission issued Notices of Proposed Rulemaking that addressed references to credit ratings in Commission Regulations 1.25 and 30.7, and in Appendix A to Part 40. *See* ''Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions,'' 75 FR 67642, Nov. 3, 2010 (proposing amendments to Regulations 1.25 and 30.7); ''Provisions Common to Registered Entities,'' 75 FR 67282, Nov. 2, 2010 (proposing to delete the current Appendix A of Part 40). The amendments proposed in those Notices are not addressed herein and may be subject to future Commission rulemaking.

[5] *See* 68 FR 5545, 5548, Feb. 4, 2003 (noting the Commission's view that consistency between Regulations 1.49 and 30.7 on this issue is ''appropriate''). In a separate release, the Commission has proposed amendments to Regulation 30.7 that are similar to the amendments to Regulation 1.49 addressed herein. *See supra* note 4.

In addition to the proposed amendment to Regulation 1.49, the Proposing Release also proposed to amend Regulation 4.24. Regulation 4.24 requires CPOs to disclose the characteristics of the commodity and other interests that the pool will trade, including, if applicable, their investment rating. In order to comply fully with the spirit and letter of the Dodd-Frank Act, the Commission proposed removing the references to ratings in Regulation 4.24 and replacing that reference with the phrase ''credit-worthiness.'' In the Proposing Release, the Commission expressly noted that CPOs may still choose to reference an investment rating to describe the credit-worthiness of an investment in its disclosures. However, the Commission noted that the CPO as appropriate should make an independent assessment of the credit-worthiness of those investments.

The Commission requested comment on its proposed amendment of Regulation 4.24, particularly with respect to what effect the removal of the credit ratings reference in Regulation 4.24 might have on the ability of investors and others to understand the disclosures of CPOs regarding the characteristics of a commodity pool. The Commission also requested comment on the ability of CPOs to make independent assessments of the credit-worthiness of their pool's investments.

II. Comments on the Proposing Release

In response to the Proposing Release, the Commission received three comments, two of which were not responsive to the issues presented in the Notice. The other commenter forwarded a letter originally submitted in response to an advance notice of proposed rulemaking issued by the Federal banking agencies.[6] The commenter discussed issues and options surrounding the implementation of section 939A of the Dodd-Frank Act, and offered analytical services to refine alternatives to credit ratings. However, the commenter did not raise any factual or policy concern relating to the rule amendments proposed by the Commission in the Proposing Release.

After considering the comments received in response to the Proposing Release, the Commission has determined to amend Regulations 1.49 and 4.24 as proposed. Section 939A of the Dodd-Frank Act directs each Federal agency, including the Commission, ''to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' As acknowledged in the Proposing Release, the Commission proposed the amendments to Regulations 1.49 and 4.24, in part, to facilitate ''its efforts to fully comply with both the spirit and letter of the Dodd-Frank Act.'' The amendments set forth herein are narrowly tailored to accomplish that task, while maintaining the commitment to the protection of customer funds that the Commission continually has promoted over the years.

III. Consideration of Costs and Benefits Under Section 15(A) of the Commodity Exchange Act (''CEA'')

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[7] The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

Although the Commission specifically requested public comment on appropriate alternatives to the rule language contained in the Proposing Release,[8] the Commission received no such comments, nor did the Commission receive any substantive comments on the costs and benefits related to the rule. Section 939A instructs the Commission to implement the removal of any references to or reliance on credit ratings in its rules and regulations.

Because of the statutory requirement to remove the reference to credit ratings from Regulation 1.49, investments in foreign depositories that have less than $1 billion in regulatory capital, but that previously were eligible depositories in reliance upon their credit ratings, may no longer be eligible depositories for customer funds. The consequences of this regulatory action may impose transaction costs associated with transferring customer funds, if necessary, to another depositor if a foreign depository is no longer eligible. Costs also may be borne by foreign banks or trusts that will no longer be eligible to receive deposits of customer funds under Regulation 1.49, given the resultant loss of business.

However, the amendments to Regulation 1.49 reflect the statutory mandate set forth under section 939A of the Dodd-Frank Act. The Commission acknowledged in the Proposing Release the uncertain reliability of ratings as currently administered, the poor past performance of credit ratings in gauging the safety of certain types of investments, and the Commission's view that credit ratings are not necessary to gauge the future ability of certain types of investments to preserve customer funds. Although the Commission specifically ''request[ed] comment on whether there is another standard or measure of solvency and creditworthiness that might be used as an appropriate, additional test of a bank's safety,'' [9] the Commission received no comments offering an appropriate alternative to the amendments to Regulation 1.49 that were contained in the Proposing Release. In light of the uncertain reliability of ratings and their poor past performance, the Commission believes that the elimination of references to credit ratings in Regulation 1.49 will enhance the protection of market participants and the public, as well as enhance sound risk management practices, by requiring that if customer funds are held in a non-U.S. bank or trust company, the non-U.S. bank or trust company have more than $1 billion of regulatory capital. The capital standard will afford greater protection of customer funds. Such protections will, in turn, promote the financial integrity of futures markets by reducing the likelihood of loss, relative to the status quo.

Similarly, the statutory requirement to modify Regulation 4.24 has the potential benefit of reducing risk in the financial system by placing more responsibility on CPOs to fully understand the credit-

[6] *See* ''Advance Notice of Proposed Rulemaking Regarding Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies,'' 75 FR 52283, Aug. 25, 2010.

[7] The rule amends the qualifications required of non-U.S. depositories in which customer funds may be held and alters the disclosures that CPOs must provide to their customers. Given the characteristics of the rule and its anticipated effect, the Commission does not believe that the rule will impact the efficiency or competitiveness of futures markets, or have any effect on price discovery.

[8] *See* 75 FR 67254, 67256, Nov. 2, 2010.

[9] *Id.*

worthiness of investments. CPOs will be required to make an independent assessment, as appropriate, of the credit-worthiness of investments in their portfolio rather than relying solely on credit ratings, though CPOs will not be prohibited from relying on credit ratings, as appropriate. Customers of CPOs may benefit from improved disclosure of the credit-worthiness of the investments in which funds are placed. In light of the specific issues identified by the Commission concerning the reliance of credit ratings, as discussed in greater detail *supra,* the Commission believes that the rule will enhance the protection of market participants and the public, promote the financial integrity of futures markets, and enhance sound risk management practices. Costs may be imposed on CPOs in improving their ability to make independent assessments of credit-worthiness. Although CPOs will not be prohibited from relying on credit ratings under Regulation 4.24, circumstances may require a CPO to engage in further assessments of the credit-worthiness of the investments in which funds are placed, as appropriate, beyond merely citing the ratings of those investments by a NRSRO. However, notwithstanding its costs, this rule is necessary and appropriate to protect the public interest, and effectuates the mandate prescribed in section 939A of the Dodd-Frank Act.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies, in promulgating rules, to consider the impact of those rules on small businesses, and whether the rules will have a significant economic impact on a substantial number of small entities.[10] The rule amendments proposed herein will affect FCMs, DCOs, and CPOs. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA, and has determined that registered FCMs,[11] DCOs,[12] and CPOs[13] are not small entities for the purpose of the RFA. Accordingly, as set forth in the Proposing Release,[14] the Chairman, on behalf of the Commission and pursuant to 5 U.S.C. 605(b), certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'')[15] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. These rule amendments do not require a new collection of information on the part of any entities subject to the rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection.

17 CFR Part 4

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

For the reasons stated in this release, the Commission hereby amends 17 CFR parts 1 and 4 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010), and the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 2. Section 1.49 is amended by revising paragraph (d)(3) to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

* * * * *

(d) * * *

(3) A depository, if located outside the United States, must be:

(i) A bank or trust company that has in excess of $1 billion of regulatory capital;

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 3. The authority citation for part 4 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 4. Section 4.24 is amended by revising paragraph (h)(1)(i) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(h) * * *

(1) * * *

(i) The approximate percentage of the pool's assets that will be used to trade commodity interests, securities and other types of interests, categorized by type of commodity or market sector, type of security (debt, equity, preferred equity), whether traded or listed on a regulated exchange market, maturity ranges and credit-worthiness, as applicable;

* * * * *

By the Commodity Futures Trading Commission.

Dated: July 20, 2011.

David A. Stawick,

Secretary.

Appendices to Removing Any Reference to or Reliance on Credit Ratings in Commission Regulations; Proposing Alternatives to the Use of Credit Ratings—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to remove references to credit ratings within the CFTC's regulations. Under Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress required the Commission to review credit rating references in our existing regulations and remove reliance upon them. The rule removes them from Regulation 1.49, which limits the types of non-U.S. banks in which futures commission merchants and derivatives clearing organizations may place customer funds. The rule also removes them from Regulation 4.24, which requires commodity pool operators to disclose to their customers where they are putting customer

[10] 5 U.S.C. 601 *et seq.*

[11] 47 FR 18618, 18619, Apr. 30, 1982.

[12] 66 FR 45604, 45609, Aug. 29, 2001.

[13] 47 FR at 18619–20.

[14] *See* 75 FR 67254, 67256, Nov. 2, 2010.

[15] 44 U.S.C. 3501 *et seq.*

money. Other references included in Regulations 1.25 and 30.7 will be taken up when the Commission considers the proposed rulemaking related to investment of customer funds.

[FR Doc. 2011–18777 Filed 7–22–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–S049–2006–0675 (Formerly Docket No. S–049)]

RIN 1218–AB50

General Working Conditions in Shipyard Employment; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: The Occupational Safety and Health Administration is correcting a final rule on General Working Conditions in Shipyard Employment published in the **Federal Register** of May 2, 2011 (76 FR 24576).

DATES: Effective August 1, 2011.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999.

General and technical information: Joseph V. Daddura, Director, Office of Maritime, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

In FR Doc. 2011–9567 appearing on page 24576 in the **Federal Register** of Monday, May 2, 2011, the following corrections are made:

§ 1910.145 [Corrected]

■ 1. On page 24698, in the first column, in § 1910.145, in paragraph (a)(1), the first sentence ''These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) that indicate and, insofar as possible, define specific hazards that could harm workers or the public, or both, or to property damage'' is corrected to read ''These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) intended to indicate and, insofar as possible, to define specific hazards of a nature such that failure to designate them may lead to accidental injury to workers or the public, or both, or to property damage.''

§ 1910.147 [Corrected]

■ 2. On page 24698, in the second column, in § 1910.147, in paragraph (a)(1)(i), the first sentence ''This standard covers the servicing and maintenance of machines and equipment in which the energization or start up of the machines or equipment, or release of stored energy, could harm employees'' is corrected to read ''This standard covers the servicing and maintenance of machines and equipment in which the *unexpected* energization or start up of the machines or equipment, or release of stored energy could cause injury to employees.''

Signed at Washington, DC, on July 19, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–18601 Filed 7–22–11; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0303; FRL–9441–5]

Approval and Disapproval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving the State Implementation Plan (SIP) submission from the State of Wyoming to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure elements'' of section 110(a)(2). The State of Wyoming submitted two certifications, dated December 7, 2007 and December 10, 2009, that its SIP met these requirements for the 1997 ozone NAAQS. The December 7, 2007 certification was determined to be complete on March 27, 2008 (73 FR 16205). In addition, EPA is approving a May 11, 2011 SIP submittal from the State that revises the State's Prevention of Significant Deterioration (PSD) program.

DATES: *Effective Date:* This final rule is effective August 24, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0303. 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, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time a state develops and submits its SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions a state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Wyoming had submitted a complete SIP (''Infrastructure SIP'') to meet these requirements.

On May 23, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Wyoming (76 FR 29680) to act on the State's Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of Wyoming's SIP as meeting the requirements of section 110(a)(2) elements (A), (B), (D)(ii), (E), (F), (G), (H), (K), (L) and (M) with respect to the 1997 ozone NAAQS. EPA also proposed approval of revisions to Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 6, Section 4 (PSD) from Wyoming's May 11, 2011 submittal, specifically revisions which meet the requirements the phase 2 implementation rule for the 1997 ozone NAAQS (72 FR 71612, November 20, 2005), the NSR implementation rule for $PM_{2.5}$ (73 FR 28321, May 16, 2008), and the inserted definition of ''replacement unit,'' which reflects the language of 40 CFR 51.166 (b)(32)(i) through (iv). EPA did not propose action on sections 110(a)(2)(D)(i), (I), and the visibility protection requirement of section 110(a)(2)(J).[2] EPA proposed to disapprove 110(a)(2)(C) and (J) on the basis that Wyoming's SIP-approved PSD program does not properly regulate greenhouse gas (GHG) emissions.

On June 3, 2010, EPA promulgated the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (''Tailoring Rule'') (75 FR 31514), setting out requirements for application of PSD to emissions sources of greenhouse gases (GHG). On December 13, 2010, EPA issued a finding of substantial inadequacy and SIP call for seven states, including Wyoming, on the basis that the states' SIP-approved PSD programs did not apply PSD to GHG-emitting sources as required under the Tailoring Rule (75 FR 77698). Next, on December 29, 2010, EPA issued a finding that the seven states had failed to submit revisions to their SIPs as necessary to correct this inadequacy (75 FR 81874). Finally, on December 30, 2010, EPA established a federal implementation plan (FIP) in the seven states to ensure that PSD permits for sources emitting GHGs could be issued in accordance with the Tailoring Rule (75 FR 82246). As the Wyoming PSD program is currently subject to a finding of substantial inadequacy and SIP call, and Wyoming had not taken steps to remedy the inadequacy, EPA proposed to disapprove infrastructure elements 110(a)(2)(C) and (J) in the NPR as each requires the SIP to contain a PSD program that meets the requirements of part C of title I of the Act.

Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[3] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source new source review (NSR)''); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 Fed. Reg. 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007).

[2] See the NPR (76 FR 29680) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.

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

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

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

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

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[4] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[5]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[6] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[7] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the

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

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

[6] See, e.g., Id., 70 FR 25,162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

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

attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[8]

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

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

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[9] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [10] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [11] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [12] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

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

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

[9] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS 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),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[10] Id., at page 2.

[11] Id., at attachment A, page 1.

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

example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[15]

[13] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[14] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42,342 at 42,344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

II. Response to Comments

EPA received one letter on June 22, 2011 containing comments from WildEarth Guardians (WEG), an environmental organization. The significant comments made in WEG's June 22, 2011 letter and EPA's responses to those comments are given below.

Comment No. 1: The commenter expressed concern that the Wyoming SIP is failing to maintain the 1997 8-hour ozone NAAQS in Sublette County. As evidence, the commenter cited data from three monitors in Sublette County. The commenter argued that the data establish the Wyoming SIP is failing to meet the requirements of CAA section 110(a)(1) and that EPA cannot approve the Wyoming infrastructure SIP for the 1997 ozone NAAQS as a result.

EPA Response: EPA disagrees with the commenter's view that the monitor data presented by the commenter has a bearing on EPA's action on the State's infrastructure SIP submission. First, there are currently no nonattainment areas designated in Wyoming for the 1997 8-hour ozone NAAQS. Thus, the State is not currently under an obligation to submit a SIP to meet the requirements of Part D of title I. More importantly, as explained in the NPR, Part D requirements are outside the scope of this action. EPA therefore disagrees with the assertion that, as a result of the cited monitoring data, EPA cannot approve the Wyoming infrastructure SIP for the 1997 ozone NAAQS.

Comment No. 2: The commenter asserted that the Wyoming SIP does not meet the monitoring requirements of 40 CFR part 58 for the 1997 8-hour ozone NAAQS, and that EPA should therefore disapprove the Wyoming infrastructure SIP for element 110(a)(2)(B). The commenter argued that because the cities of Casper and Cheyenne each have an urbanized population greater than 50,000, both areas are required to have ozone monitors under 40 CFR part 58, Appendix D. The commenter concluded that, as neither city contains an ozone monitor, Wyoming's SIP does not fulfill the requirements of 110(a)(2)(B). The commenter further argued that a discussion of monitoring in Pinedale, Casper, Rock Springs, and Gillette in a recent Wyoming Monitoring Network Plan demonstrates a need for ''a more expansive network'' of ozone monitors in the State.

EPA Response: EPA disagrees with this commenter's conclusion with respect to whether the monitoring network required by the Wyoming SIP meets the current requirements. Table D–2 in Appendix D to 40 CFR part 58 sets the minimum number of required State and Local Air Monitoring Stations (SLAMS) for ozone. Footnote 4 to the table explicitly indicates that minimum monitoring requirements in the last column should apply in the absence of a design value. While both Casper and Cheyenne have populations greater than 50,000 (but less than 350,000), they lack ozone design values at this time. Therefore, the minimum number of required SLAMS monitors for ozone for Casper and Cheyenne is zero, and the current monitoring network, with respect to those two cities, meets the current requirements of 40 CFR part 58, Appendix D for ozone. The 2010 network assessment cited by the commenter and the 2011 network plan linked to by the commenter do not provide any information to the contrary. EPA therefore disagrees with the commenter's conclusion that the State's infrastructure SIP is not approvable at this time.

EPA notes, however, that it has proposed revisions to the current monitoring requirements for ozone. On July 16, 2009, EPA proposed to change the monitoring requirements, in part to insure that smaller metropolitan areas with populations between 50,000 and 350,000 that currently do not have ozone monitors will get them, in order to assure the health benefits of the NAAQS in these areas.[16] If EPA finalizes the proposed revisions to the monitoring requirements, this would help to address the concerns of the commenter.

Comment No. 3: The commenter expressed concern that monitoring is only required from May to September, whereas areas such as Sublette County have maximum ozone concentrations in the winter months. The commenter argued that EPA must assure the Wyoming SIP requires monitoring during the wintertime. According to the commenter, the failure to monitor in the winter months would be grounds for disapproval of the infrastructure SIP under section 110(a)(2)(B).

EPA Response: EPA is concerned with the wintertime ozone issues in western states. However, with respect to the season during which monitoring is currently required, the required ozone monitoring seasons are provided in 40 CFR part 58, Appendix D, which currently specifies monitoring from May through September. The proposed revision to the ozone monitoring

[16] See, ''Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements,'' 74 FR 34525, at 34527–28 (July 16, 2009).

requirements discussed in the response to comment 2 above would also revise the ozone monitoring season for Wyoming (74 FR at 34538). If EPA finalizes the proposed revision to the ozone monitoring season for Wyoming, the monitoring season will be extended and EPA anticipates that this would help to address the underlying concern of the commenter. At this point, however, Wyoming complies with the existing monitoring season requirements of Appendix D. Thus, the comment gives no basis for EPA to change its proposed approval of the Wyoming infrastructure SIP for element 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

Comment No. 4: The commenter expressed concern that Wyoming's title V program does not increase permit fees each year in accordance with the Consumer Price Index as required by title V of the CAA, citing 42 U.S.C. 7661a(b)(3)(B)(v) and 40 CFR 70.9(b)(2)(iv). The commenter argues that this creates an issue under section 110(a)(2)(L) that precludes approval of the State's infrastructure SIP.

EPA Response: EPA disagrees with this comment. As stated in the text of the section, the fees specified in 110(a)(2)(L) are no longer applicable to title V operating permit programs after approval of such programs. As noted in the NPR, final approval of the title V operating permit program became effective April 23, 1999 (64 FR 8523, Feb. 22, 1990). Therefore, EPA concludes that the Wyoming infrastructure SIP for the 1997 8-hour ozone NAAQS meets the requirements of section 110(a)(2)(L) with respect to the title V program.

III. Final Action

In this action, EPA is approving the following section 110(a)(2) infrastructure elements for Wyoming for the 1997 ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (K), (L), and (M). EPA is also approving Wyoming's May 11, 2011 SIP submittal that revises the State's PSD program.

In this action, EPA is disapproving section 110(a)(2)(C) and (J) for the 1997 ozone NAAQS.

IV. Statutory and Executive Order Reviews

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

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

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

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 *September 23, 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2011.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 2 U.S.C. 7401 et seq.

Subpart ZZ—Wyoming

■ 2. Section 52.2620 is amended by:

■ a. In paragraph (c)(1), revising the entry under Chapter 6 for ''Section 4''.

■ b. In paragraph (e), add an entry for ''XIX'', Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State Citation	Title/subject	State adopted and effective date	EPA approval date and citation[1]	Explanations
*	*	*	*	*
Chapter 6				
*	*	*	*	*
Section 4	Prevention of Significant Deterioration.	7/8/10 and 9/7/10	6/30/11, 7/25/11 [Insert page number where the document begins].	
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

* * * * * (e) * * *

Name of nonregulatory SP provision	Applicable geographic or non-attainment area	State submittal date/adopted date	EPA approval date and citation[3]	Explanation
*	*	*	*	*
XIX. Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.	Statewide	12/7/2007 and 12/10/2007	6/30/11, 7/25/11 [Insert page number where the document begins].	

[3] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the FEDERAL REGISTER cited in this column for that particular provision.

[FR Doc. 2011–18423 Filed 7–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0426; FRL–9442–7]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Permits by Rule and Regulations for Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on August 31, 1993, July 22, 1998, and October 5, 2010. These revisions amend existing sections and create new sections in Title 30 of the Texas Administrative Code (TAC), Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. The August 31, 1993, revision creates two new sections at 116.174 and 116.175 for the use of emission reductions as offsets in new source review permitting. The July 22, 1998, revision creates new section 116.116(f) allowing for the use of Discrete Emission Reduction Credits (DERC) to exceed emission limits in permits (permit allowables) and amends section 116.174 to update internal citations to other Texas regulations. The October 5, 2010, revision amends section 116.116(f) to update internal citations to other Texas regulations. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: This direct final rule is effective on September 23, 2011 without further notice, unless EPA receives relevant adverse comment by August 24, 2011. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2011–0426, by one of the following methods:

(1) *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail:* Ms. Erica Le Doux at *ledoux.erica@epa.gov*.

(3) *Fax:* Ms. Erica Le Doux, Air Permits Section (6PD–R), at fax number 214–665–6762.

(4) *Mail:* Ms. Erica Le Doux, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(5) *Hand or Courier Delivery:* Ms. Erica Le Doux, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2011–0426. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that 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 along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's direct final action, please contact Ms. Erica Le Doux (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–7265; fax number (214) 665–6762; e-mail address *ledoux.erica@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever, any reference to ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What action is EPA taking?

We are taking direct final action to approve severable portions of three revisions to the Texas SIP submitted on August 31, 1993, July 22, 1998, and October 5, 2010. The August 31, 1993, SIP submittal creates two new sections, 116.174 and 116.175, establishing the requirements for use and recordkeeping of emission reductions in New Source Review (NSR) permitting. The July 22, 1998 SIP submittal creates a new section at 116.116(f) that allows the use of Discrete Emission Reduction Credits (DERCs) to be used to exceed permit allowables and amends existing section 116.174 to correctly cross-reference other Texas permitting regulations. The October 5, 2010, SIP submittal amends section 116.116(f) to correctly cross-reference the SIP-approved DERC rules at Title 30 of the Texas Administrative Code (30 TAC) Chapter 101, Subchapter H, Division 4. We are approving new sections 116.174 and 116.175 submitted on August 31, 1993. We are approving new section 116.116(f) and amendments to section 116.174 submitted on July 22, 1998. Finally, we are approving the amendment to section 116.116(f) submitted on October 5, 2010.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. As explained in our technical support document (TSD), we are finding this action noncontroversial because the three rules that are the subject of our approval serve to cross-reference current SIP-approved sections. 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 SIP revision if relevant adverse comments are received. This rule will be effective on September 23, 2011 without further notice unless we receive relevant adverse comment by August 24, 2011. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What did Texas submit?

We are approving severable provisions of three SIP revisions that the Texas Commission on Environmental Quality (TCEQ) adopted on August 16, 1993; June 17, 1998; and September 15, 2010 and submitted to EPA on August 31, 1993; July 22, 1998; and October 5, 2010, respectively. Copies of the revised rules as well as the Technical Support Document (TSD) can be obtained from the Docket, as discussed in the ''Docket'' section above. A discussion of the specific Texas rule changes that we are approving is included in the TSD and summarized below. The TSD also contains a discussion as to why EPA is not taking action on certain provisions of each Texas SIP submittal and documents why these provisions are severable from the provisions that we are approving.

- We are taking no action in this direct final rule upon revisions to 30 TAC Section 116.410 for emergency orders, submitted on August 31, 1993, because this provision is severable from the emission reduction provisions and subsequent emergency order provisions are still pending EPA review. EPA will address this rule in a separate action. EPA is currently under a Settlement Agreement to take action on the emergency order provisions on or before December 31, 2012.
- We are also taking no action in this direct final rule upon revisions to 30 TAC Section 116.620 for Installation and/or Modification of Oil and Gas Facilities submitted on July 22, 1998. The provisions are severable from the emission reduction provisions that are the subject of today's action. EPA will address this rule in a separate action. Additionally, EPA is currently under a Consent Decree to take action on the Installation and/or Modification of Oil

and Gas Facilities provisions on or before October 31, 2011.

• We are taking no action upon revisions to 30 TAC Section 116.311(a) pertaining to qualified facilities for permit renewals submitted on July 22, 1998, because the qualified facility program provisions are severable from the emission reduction provisions for permitting and will be addressed by EPA at a later date in a separate action.

• We are taking no action upon revisions to 30 TAC Section 116.312 submitted on July 22, 1998, which relates to public participation for permit renewals. These public participation provisions are severable from the emission reduction provisions for permitting and will be addressed by EPA at a later date in a separate action.

• We are taking no action upon the remainder of the revisions to 30 TAC Chapter 116 submitted on October 5, 2010. The remainder of this SIP submittal package concerns the qualified facilities program, which is severable from the emission reductions provisions for permitting and will be addressed by EPA at a later date in a separate action.

A. August 31, 1993 Submittal

1. Section 116.174—Determination by Executive Director To Authorize Reductions

The TCEQ adopted section 116.174 on August 16, 1993, to provide the criteria by which the TCEQ Executive Director (ED) will determine whether emission reductions can be used for purposes of NSR permitting. Section 116.174 requires that the ED approve reductions for use pursuant with requirements set forth in SIP-approved section 116.170. Additionally, any emission reductions approved for use as offsets by the ED must be made as enforceable permit conditions.

2. Section 116.175—Recordkeeping

The TCEQ adopted new section 116.175 on August 16, 1993, to establish that the recordkeeping burden for the generation and use of emission reductions in NSR permitting is on the applicant. The TCEQ will only maintain records associated with the permit application and files. The permit applicant is responsible for making all records related to the emission reductions available upon request by the ED.

B. July 22, 1998 Submittal

1. Section 116.116(f)—Use of Credits

The TCEQ adopted new section 116.116(f) on June 17, 1998, to provide that DERCs generated under the TCEQ's banking and trading provisions at 30 TAC Section 101.29 can be used to exceed permit allowables, if all applicable requirements of section 101.29 are satisfied. Since the adoption of section 116.116(f), the TCEQ has recodified the SIP-approved DERC provisions from 30 TAC Section 101.29 to 30 TAC Section 101.376. The use of DERCs cannot be used to authorize any physical changes to a facility.

EPA reviewed and conditionally approved the DERC program on September 6, 2006 (see 71 FR 52703). This conditional approval was converted to a full approval on May 18, 2010 (see 75 FR 27644). The full approval action resulted after we found TCEQ to have satisfied all elements that were outlined in a commitment letter submitted by TCEQ, dated September 8, 2005. This commitment letter can be found in the docket for our approval of the DERC program at EPA–R06–OAR–2005–TX–0029. The DERC rules establish a type of Economic Incentive Program (EIP), in particular an open market emission trading (OMT) program as described in EPA's EIP Guidance document, ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001). In an OMT program, a source generates short-term emission credits (called discrete emission reduction credits, or DERCs, in the Texas program) by reducing its emissions. The source can then use these DERCs at a later time, or trade them to another source to use at a later time. The trading program assumes that many sources will participate and continuously generate new DERCs to balance with other sources using previously generated discrete credits. DERCs are quantified, banked and traded in terms of mass (tons) and may be generated and used statewide. Reductions of all criteria pollutants, with the exception of lead, may be certified as DERCs.

2. Section 116.174—Determination by Executive Director To Authorize Reductions

The TCEQ adopted amendments to section 116.174 on June 17, 1998, to remove outdated references to the Texas Air Control Board, and to update references to other sections of the Texas NSR permitting regulations where emission reductions can be used in permits.

C. October 5, 2010 Submittal

Section 116.116(f)—Use of Credits

The TCEQ adopted amendments to section 116.116(f) on September 15, 2010, to change references to outdated section 101.29 to the current SIP-approved section 101.376.

III. What is EPA's evaluation of these SIP revisions?

A. August 31, 1993 Submittal

1. Section 116.174—Determination by Executive Director To Authorize Reductions

The August 31, 1993 submittal (adopted by TCEQ on August 16, 1993) of new section 116.174 is approvable. New section 116.174 requires that the ED approve the use of emission reductions pursuant to the requirements in section 116.170. We approved section 116.170 on March 20, 2009, as consistent with the requirements of section 173 of the CAA and 40 CFR Part 51, Subpart I (see 74 FR 11851).

2. Section 116.175—Recordkeeping

The August 31, 1993 submittal (adopted by TCEQ on August 16, 1993) of new section 116.175 is approvable. New section 116.175 was adopted to place the recordkeeping burden on the use of emission reductions in NSR permitting in accordance with section 116.170 on the permit applicant rather than the TCEQ. The TCEQ will maintain records contained in the permit application and permit files, but all other information necessary to verify the emission reductions used in the permit are the responsibility of the permit holder and must be made available at the request of the TCEQ ED. Placing the burden of proof on the permit holder is consistent with the requirements in NSR and Prevention of Significant Deterioration (PSD) permitting at 40 CFR Part 51, Subpart I, that the permit holder maintain all necessary records to substantiate emission reductions and verify emission limitations. Further, the SIP-approved Emissions Banking and Trading Provisions at 30 TAC Chapter 101, Subchapter H, Divisions 1 and 4 for the Emission Reduction Credit and Discrete Emission Reduction Credit programs, makes clear that the generator and user of the emission reductions—not the TCEQ—is responsible for maintaining all necessary records to substantiate the reduction (see 30 TAC Sections 101.302(g) and 101.372(h)).

B. July 22, 1998 Submittal

1. Section 116.116(f)—Use of Credits

The July 22, 1998 submittal (adopted by TCEQ on June 17, 1998), which created new section 116.116(f) is approvable. New section 116.116(f) is necessary to adequately implement the Chapter 116 permitting program for new construction and modification. The new

section 116.116(f) provides that DERCs can be used as offsets in NSR permitting, consistent with the TCEQ's banking and trading provisions at former 30 TAC Section 101.29. EPA approved the use of DERCs in NSR permitting as consistent with the requirements of section 173 of the CAA on September 6, 2006 (see 71 FR 52703). Since the adoption of section 116.116(f), the TCEQ has recodified the SIP-approved DERC provisions from 30 TAC Section 101.29 to 30 TAC Section 101.376. EPA is approving the July 22, 1998 adoption of section 116.116(f) and a subsequent revision that updates the cross-reference.

2. Section 116.174—Determination by Executive Director To Authorize Reductions

The July 22, 1998 submittal which amends section 116.174 is approvable. The amendments remove outdated references to the Texas Air Control Board and update internal cross references to other sections (in Chapter 116) where emission reductions can be used in NSR permitting. The TCEQ has a responsibility under the CAA to routinely update the permitting regulations to include accurate information.

C. October 5, 2010 Submittal

Section 116.116(f)—Use of Credits

The October 5, 2010 submittal (adopted by the TCEQ on September 15, 2010) of the amendments to section 116.116(f) are approvable. These amendments update the outdated references to obsolete section 101.29 with the current citation to section 101.376, and are necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. EPA approved the use of DERCs as NSR offsets consistent with section 173 of the CAA on September 6, 2006 (see 71 FR 52703).

D. Does approval of Texas's rule revisions interfere with attainment, reasonable further progress, or any other applicable requirement of the act?

Section 110(l) of the Clean Air Act states:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

Thus, under section 110(l), sections 116.116(f), 116.174, and 116.175 must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. The three sections are necessary components of the Texas NSR permitting program. Without these provisions, permit applicants will not have the necessary flexibility provided to them in the Texas SIP and the CAA.

Section 116.116(f) will not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. Section 116.116(f) refers to a SIP-approved usage of DERCs to exceed permit allowables. This use of DERCs to exceed permit allowables was previously conditionally approved into the SIP on September 6, 2006, and fully approved by EPA on May 18, 2010, to be consistent with section 110(l) of the CAA, see 70 FR 58165 and 75 FR 27644, respectively. In our proposed approval notice of the DERC program we stated that:

> We have also considered whether the potential use of DECs [1] to exceed allowable emission levels under 30 TAC § 101.376(b)(1) is contrary to section 110(l) in that it could allow sources to exceed limits in their CAA Title V permits, which are ''applicable requirements'' under the Act. We conclude that this aspect of the rule does not violate section 110(l), for the following reasons. First, EPA has addressed the interface of Title V permits and trading programs in the EIP guidance, which provides:
>
> If a facility that has a title V operating permit wishes to participate in your approved EIP, you must modify the facility's operating permit to include the detailed compliance provisions necessary to assure compliance with the EIP. Thus, the permit becomes a valuable tool to ensure the source meets the requirements of the EIP.
>
> Once the permit includes terms and conditions necessary to implement the EIP (as described below), the source may typically make individual trades under the EIP without the need for future formal permit revisions. This is true because most trading activity under such a permit would already be addressed and allowed by the specific terms and conditions of the permit and such trading would not normally conflict with the permit. This is the principle expressed by section 70.6(a)(8) of the CFR, which states that permit revisions are not required for trading program changes that are ''provided for'' in the permit.
>
> (EIP Guidance, Appendix 16.8.) Texas has modified its Title V permit template so as to address the permissible use of DECs to meet Title V permit requirements. As further explained in this TSD, we find that the Texas permit language satisfies the concerns identified in Appendix 16.8.
>
> In reaching this conclusion, we also considered that a Title V permit is not itself a source of substantive limits. Rather, it incorporates applicable requirements under other permits and programs. In Texas, as elsewhere, many of the allowable emission levels in Title V permits are determined through New Source Performance Standards (NSPS), Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), or National Emission Standards for Hazardous Air Pollutants (NESHAPs). Under the Texas rules, DECs may not be used for compliance with any of these programs. The rule does allow DECs to be used for compliance with Reasonably Available Control Technology (RACT) standards, in accordance with EPA's guidance. Specifically, the guidance provides that ''[i]f your EIP allows sources to avoid direct application of RACT technology, your EIP must ensure that the level of emission reductions resulting from implementation of the EIP will be equal to those reductions expected from the direct application of RACT.'' (EIP Guidance, Appendix 16.7) The Texas program ensures consistency with that element of the EIP Guidance through the requirement that a user of DECs must retire 10 percent more credits than are needed. Accordingly, any use of DECs for RACT compliance will have been preceded by a ten percent greater reduction.
>
> The above discussion concerns criteria pollutants for which an area is classified as nonattainment. As for pollutants for which an area is in attainment, EPA believes that the DERC rule is consistent with section 110(l). Discrete credit use in attainment areas could potentially result in temporary local increases in such attainment pollutants, but only in the sense of authorizing limited exceedances of state-only permit requirements. That is, in attainment areas in Texas, the federally enforceable permit limits are all based on programs, such as BACT and NSPS, for which DEC use is not authorized under the Texas rule. DEC use for attainment pollutants can therefore only affect non-SIP requirements. Irrespective of the DERC rule, such non-SIP requirements are subject to change without undergoing a 110(l) analysis. Accordingly, the DERC SIP revision is not itself causing any increases in attainment pollutants that might be contrary to section 110(l).
>
> [See 70 FR 58165–58166, October 5, 2005]

Section 116.174 will not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. Section 116.174 states that the TCEQ ED will approve the use of emission reductions for NSR permitting consistent with the requirements of section 116.170. EPA

[1] In the OMT program, a source generates emission credits by reducing its emissions during a discrete period of time. These credits, called discrete emission credits or DECs in the Texas program, are quantified in units of mass. DEC is a generic term that encompasses reductions from stationary sources (discrete emission reduction credits, or DERCs), and reductions from mobile sources (mobile discrete emission reduction credits, or MDERCs). This footnote is to provide an explanation of the term DEC and is not a part of the above quote from a previous notice.

approved section 116.170 into the SIP and found that it is consistent with section 110(l) of the CAA on March 20, 2009 (74 FR 11851).

Section 116.175 will not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. Section 116.175 states that the recordkeeping burden for emission reduction usage will be on the permit holder, but all other information necessary to verify the emission reductions used in the permit are the responsibility of the permit holder and must be made available at the request of the TCEQ ED. These recordkeeping requirements will not violate section 110(l).

IV. Final Action

EPA is taking direct final action to approve revisions to the Texas SIP submitted on August 31, 1993, July 22, 1998, and October 5, 2010. Specifically, EPA is approving new sections 116.174 and 116.175, submitted on August 31, 1993, establishing the approval criteria and recordkeeping requirements for emission reductions used in NSR permitting. We are also approving new section 116.116(f) that provides for the use of DERCs in NSR permitting and amendments to section 116.174 submitted on July 22, 1998. We are also approving amendments to section 116.116(f), submitted on October 5, 2010 to correctly update internal citations to the TCEQ DERC program.

As explained previously, EPA is not acting on other severable portions of the August 31, 1993; July 22, 1998; and October 5, 2010 SIP submittals. Specifically, EPA is not taking action on the revisions to section 116.410 submitted on August 31, 1993. EPA is not taking action on the revisions to sections 116.311(a), 116.312, or 116.610 submitted on July 22, 1998. Additionally, EPA is not taking action on the remainder of the October 5, 2010, submittal. These revisions remain under review by EPA and will be addressed in separate actions.

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. section 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 September 23, 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 12, 2011.

Al Armendariz,

Regional Administrator, EPA Region 6.

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 SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended as follows:

■ a. By revising the entry for Section 116.116;

■ b. By adding new entries for Sections 116.174 and 116.175.

The additions and revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
*	*	*	*	*
Subchapter B—New Source Review Permits Division 1—Permit Application				
*	*	*	*	*
Section 116.116	Changes to Facilities	9/15/2010	7/25/2011, [Insert *FR* page number where document begins].	The SIP does not include paragraphs (b)(3) and (b)(4) and subsection (e).
*	*	*	*	*
Division 7—Emission Reductions: Offsets				
*	*	*	*	*
Section 116.174	Determination by Executive Director to Authorize Reductions.	6/17/1998	7/25/2011, [Insert *FR* page number where document begins].	
Section 116.175	Recordkeeping	8/16/1993	7/25/2011, [Insert *FR* page number where document begins].	
*	*	*	*	*

[FR Doc. 2011–18578 Filed 7–22–11; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1201]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other

Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Delaware:					
New Castle	Town of Odessa (11–03–0744P).	March 31, 2011; April 7, 2011; *The Middletown Transcript*.	The Honorable Kathy Harvey, Mayor, Town of Odessa, P.O. Box 111, Odessa, DE 19730.	August 5, 2011	100066
New Castle	Unincorporated areas of New Castle County (10–03–1927P).	January 7, 2011; January 14, 2011; *The News Journal*.	The Honorable Paul G. Clark, New Castle County Executive, 87 Reads Way, New Castle, DE 19720.	May 16, 2011	105085
New Mexico: Santa Fe.	City of Santa Fe (10–06–2026P).	March 3, 2011; March 10, 2011; *The Santa Fe New Mexican*.	The Honorable David Coss, Mayor, City of Santa Fe, 200 Lincoln Avenue, Santa Fe, NM 87504.	February 24, 2011	350070
Oklahoma:					
Cleveland	City of Norman (10–06–1004P).	October 6, 2010; October 13, 2010; *The Norman Transcript*.	The Honorable Cindy S. Rosenthal, Mayor, City of Norman, 201 West Gray Street, Norman, OK 73069.	September 29, 2010	400046
Kay	City of Ponca City (10–06–2643P).	March 14, 2011; March 21, 2011; *The Ponca City News*.	The Honorable Homer Nicholson, Mayor, City of Ponca City, 516 East Grand Avenue, Ponca City, OK 74601.	July 19, 2011	400080
Oklahoma	City of Oklahoma City (10–06–1884P).	March 30, 2011; April 6, 2011; *The Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	July 28, 2011	405378
Osage and Tulsa.	Town of Skiatook (10–06–0568P).	February 23, 2011; March 2, 2011; *The Skiatook Journal*.	The Honorable Steve Kendrick, Mayor, Town of Skiatook, P.O. Box 399, Skiatook, OK 74070.	June 30, 2011	400212
Tulsa	Unincorporated areas of Tulsa County (10–06–1294P).	March 23, 2011; March 30, 2011; *The Tulsa World*.	The Honorable Fred Perry, Chairman, Tulsa County Board of Commissioners, 500 South Denver Avenue West, Tulsa, OK 74103.	April 18, 2011	400462
Pennsylvania:					
Cumberland	Township of Upper Allen (10–03–1016P).	November 15, 2010; November 22, 2010; *The Patriot-News*.	The Honorable James G. Cochran, President, Township of Upper Allen Board of Commissioners, 100 Gettysburg Pike, Mechanicsburg, PA 17055.	March 22, 2011	420372
McKean	Borough of Port Allegany (10–03–1879P).	March 24, 2011; March 31, 2011; *The Reporter Argus*.	The Honorable Donald G. Carley, Mayor, Borough of Port Allegany, 45 West Maple Street, Port Allegany, PA 16743.	April 18, 2011	420671
McKean	Township of Liberty (10–03–1879P).	March 24, 2011; March 31, 2011; *The Reporter Argus*.	The Honorable Gary L. Turner, Chairman, Township of Liberty Board of Supervisors, 21514 Route 6, Port Allegany, PA 16743.	April 18, 2011	420668
Texas:					
Bexar	City of San Antonio (09–06–3178P).	April 6, 2011; April 13, 2011; *The Hart Beat*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	March 30, 2011	480045
Bexar	City of San Antonio (10–06–1080P).	February 11, 2011; February 18, 2011; *The San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	February 4, 2011	480045
Bexar	City of San Antonio (10–06–3684P).	April 6, 2011; April 13, 2011; *The San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	August 11, 2011	480045
Bexar	City of Selma (09–06–3178P).	April 6, 2011; April 13, 2011; *The Hart Beat*.	The Honorable Tom Daly, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	March 30, 2011	480046
Collin	City of Frisco (11–06–1691P).	April 1, 2011; April 8, 2011; *The Frisco Enterprise*.	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	March 25, 2011	480134
Collin	City of Royse City (10–06–1217P).	September 22, 2010; September 29, 2010; *The Royse City Herald Banner*.	The Honorable Jerrell Baley, Mayor, City of Royse City, P.O. Box 638, Royse City, TX 75189.	January 27, 2011	480548

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin	Unincorporated areas of Collin County (10–06–1217P).	September 22, 2010; September 29, 2010; *The Dallas Morning News*.	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	January 27, 2011	480130
Dallas	City of Dallas (10–06–2771P).	March 28, 2011; April 4, 2011; *The Dallas Morning News*.	The Honorable Dwaine Caraway, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	April 20, 2011	480171
Dallas	City of Garland (10–06–1854P).	March 31, 2011; April 7, 2011; *The Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046.	August 5, 2011	485471
Dallas	City of Richardson (10–06–3245P).	April 5, 2011; April 12, 2011; *The Dallas Morning News*.	The Honorable Gary Slagel, Mayor, City of Richardson, P.O. Box 830309, Richardson, TX 75083.	August 10, 2011	480184
Dallas	City of Rowlett (10–06–1854P).	March 31, 2011; April 7, 2011; *The Dallas Morning News*.	The Honorable John E. Harper, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	August 5, 2011	480185
Denton	City of Denton (11–06–0102P).	March 22, 2011; March 29, 2011; *The Denton Record-Chronicle*.	The Honorable Mark Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	July 27, 2011	480194
Denton	Unincorporated areas of Denton County (10–06–3227P).	March 9, 2011; March 16, 2011; *The Denton Record-Chronicle*.	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	July 14, 2011	480774
Fort Bend and Waller.	City of Katy (10–06–2439P).	March 3, 2011; March 10, 2011; *The Katy Times* and *The Waller County News Citizen*.	The Honorable Don Elder, Jr., Mayor, City of Katy, 901 Avenue C, Katy, TX 77493.	July 8, 2011	480301
Guadalupe	City of Cibolo (10–06–3676P).	April 7, 2011; April 14, 2011; *The Seguin Gazette*.	The Honorable Jennifer Hartman, Mayor, City of Cibolo, P.O. Box 826, Cibolo, TX 78108.	August 12, 2011	480267
Kaufman	City of Forney (10–06–1509P).	January 20, 2011; January 27, 2011; *The Forney Messenger*.	The Honorable Darren Rozell, Mayor, City of Forney, P.O. Box 826, Forney, TX 75126.	July 4, 2011	480410
Tarrant	City of Fort Worth (10–06–1954P).	October 5, 2010; October 12, 2010; *The Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 9, 2011	480596
Tarrant	City of North Richland Hills (10–06–1292P).	November 5, 2010; November 12, 2010; *The Fort Worth Star-Telegram*.	The Honorable Oscar Trevino, Mayor, City of North Richland Hills, P.O. Box 820609, Richland Hills, TX 76182.	February 28, 2011	480607
Tarrant	City of North Richland Hills (10–06–1455P).	September 3, 2010; September 10, 2010; *The Fort Worth Star-Telegram*.	The Honorable Oscar Trevino, Mayor, City of North Richland Hills, P.O. Box 820609, Richland Hills, TX 76182.	August 26, 2010	480607
Travis	City of Austin (10–06–1285P).	December 30, 2010; January 6, 2011; *The Austin American-Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	December 23, 2010	480624
Travis	City of Austin (10–06–2352P).	April 6, 2011; April 13, 2011; *The Austin American-Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	August 11, 2011	480624
Waller	Unincorporated areas of Waller County (10–06–2439P).	March 3, 2011; March 10, 2011; *The Katy Times* and *The Waller County News Citizen*.	The Honorable Glenn Beckendorff, Waller County Judge, 836 Austin Street, Suite 203, Hempstead, TX 77445.	July 8, 2011	480640
Williamson	City of Cedar Park (10–06–2438P).	November 11, 2010; November 18, 2010; *The Hill Country News*.	The Honorable Bob Lemon, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	March 18, 2011	481282
Williamson	City of Leander (09–06–3213P).	January 27, 2011; February 3, 2011; *The Leander Ledger*.	The Honorable John Cowman, Mayor, City of Leander, P.O. Box 319, Leander, TX 78646.	June 3, 2011	481536
Virginia: Frederick	Unincorporated areas of Frederick County (11–03–0191P).	December 28, 2010; January 4, 2011; *The Winchester Star*.	The Honorable Richard C. Shickle, Chairman, Frederick County Board of Supervisors, 292 Green Spring Road, Winchester, VA 22603.	May 4, 2011	510063

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 8, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18619 Filed 7–22–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[CS Docket No. 97–80; PP Docket No. 00–67; FCC 10–181]

Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements in a final rule concerning commercial availability of navigation devices, and compatibility between cable systems and consumer electronics equipment.

DATES: The amendments to 47 CFR 76.1205(b)(1), 76.1205(b)(1)(i), 76.1205(b)(2), 76.1205(b)(5), and 76.1602(b), published at 76 FR 40263, July 8, 2011, are effective on August 8, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov* <mailto: *Brendan.Murray@fcc.gov*>, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: In a Third Report and Order and Order on Reconsideration released on October 14, 2011, FCC 10–181, and published in the **Federal Register** on July 8, 2011, 76 FR 40263, the Federal Communications Commission adopted a new rule which contained information collection requirements subject to the Paperwork Reduction Act. The Third Report and Order and Order on Reconsideration stated that the rule changes requiring OMB approval would become effective upon announcement in the **Federal Register** of OMB approval. On July 12, 2011, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 76.1205(b)(1), 76.1205(b)(1)(i), 76.1205(b)(2), 76.1205(b)(5), and 76.1602(b). These information collections are assigned OMB Control No. 3060–0849 and OMB Control No. 3060–0652. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–18603 Filed 7–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 04–319; RM–10984; DA 11–1072]

Radio Broadcasting Services; Clinchco, VA, and Coal Run, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration, granted.

SUMMARY: The staff reinstates and grants a rulemaking petition filed by East Kentucky Broadcasting Corporation (''East Kentucky''), upgrading its Station WPKE–FM, Coal Run Kentucky, from Channel 276A to Channel 221C3.

DATES: Effective August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MB Docket No. 04–319, adopted June 16, 2011, and released June 17, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

The *Report and Order* denied East Kentucky's rulemaking petition because it proposed an effective radiated power (''ERP'') below the minimum required for Class C3 FM stations under § 73.211 of the Commission's rules. *See* 72 FR 16315 (April 4, 2007). The staff reversed the *Report and Order,* explaining that a station may have a height above average terrain (''HAAT'') greater than the class reference provided that it reduces its ERP such that the distance to its 60 dBu contour exceeds the reference distance for the next lower class and does not exceed the reference distance for its class. Because East Kentucky's proposal met these requirements, the staff reinstated and granted the rulemaking petition. The document also rejected an argument that the proposal was not technically feasible due to a terrain obstruction.

To accommodate East Kentucky's upgrade, the staff involuntarily modified the license of Station WDIC–FM, Clinchco, Virginia, from Channel 221A to Channel 276A. The reference coordinates for Channel 221C3 at Coal Run, Kentucky, are 37–23–57 NL and 82–23–42 WL, and for Channel 276A at Clinchco, Virginia, are 37–08–42 NL and 82–23–22 WL.

East Kentucky's proposal was formerly a rule change to § 73.202(b), the FM Table of Allotments. *See* 69 FR 51414 (August 19, 2004). As a result of changes to the Commission's processing rules, modifications of FM channels for existing stations are no longer listed in § 73.202(b) and are instead reflected in the Media Bureau's Consolidated Data Base System. *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services,* Report and Order, 71 FR 76208 (December 20, 2006).

This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because no changes are being made to 47 CFR 73.202(b)).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2011–18636 Filed 7–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–74; RM–11630, DA 11–1185]

Television Broadcasting Services; El Paso, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: A petition for rulemaking was filed by NPG of Texas, LP (''NPG''), licensee of KVIA–TV, channel 7, El Paso, Texas, requesting the substitution of channel 17 for channel 7 at El Paso. KVIA–TV has experienced extensive signal coverage problems on channel 7 following the June 12, 2009 digital transition deadline, after which the Video Division granted KVIA–TV Special Temporary Authority to supplement its service on channel 7 with continued service on channel 17. This channel substitution will serve the public interest by significantly improving the public's digital signal reception from KVIA–TV.

DATES: This rule is effective August 24, 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. 11–74, adopted July 11, 2011, and released July 12, 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 Texas, is amended by adding channel 17 and removing channel 7 at El Paso.

[FR Doc. 2011–18746 Filed 7–22–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202 and 218

RIN–0750–AH29

Defense Federal Acquisition Regulation Supplement; Simplified Acquisition Threshold for Humanitarian or Peacekeeping Operations (DFARS Case 2011–D032)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DOD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the authority provided by 10 U.S.C. 2302(7) to invoke a simplified acquisition threshold that is two times the amount specified at 41 U.S.C. 134 (formerly 41 U.S.C. 403(11)), as amended by section 807 of the National Defense Authorization Act for Fiscal Year 2005, to support a humanitarian or peacekeeping operation. The current simplified acquisition threshold is $150,000 as specified in Federal Acquisition Regulation 2.101.

DATES: *Effective Date:* July 25, 2011.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 23, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D032, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2011–D032'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D032.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D032'' on your attached document. Follow the instructions for submitting comments.

- *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D032 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, ATTN: Meredith Murphy, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, telephone 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

United States laws provide for special emergency procurement authorities to be used—

(a) In support of a contingency operation;

(b) To facilitate the defense against or recovery from nuclear, biological,

chemical, or radiological attack against the United States; and

(c) In support of a humanitarian or peacekeeping operation.

The first two of the authorities above were made available for use by agencies in addition to DoD by placing them at 41 U.S.C. 1903 (formerly 41 U.S.C. 428a). The latter authority resides solely in DoD.

The three special emergency procurement authorities are specified in statute:

- Contingency operation: 10 U.S.C. 101(13) and 41 U.S.C. 1903 (formerly 41 U.S.C. 428a).
- Defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States: 41 U.S.C. 1903 (formerly 41 U.S.C. 428a).
- Humanitarian or peacekeeping operation: 10 U.S.C. 2302(7).

After September 11, 2001, the Governmentwide special emergency procurement authorities were enacted (41 U.S.C. 1903 (formerly 41 U.S.C. 428a). These authorities provided for increases in the simplified acquisition threshold and/or micropurchase threshold depending on what type of special emergency is declared. The Federal Acquisition Regulation (FAR) was revised to implement the authority to increase thresholds when supporting a contingency operation or facilitating the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

While the definition of a humanitarian or peacekeeping operation is included in the FAR at 2.101, 41 U.S.C. 1903 does not provide Governmentwide authority for raising the simplified acquisition threshold in support of such operations. Therefore, its authority is included in the DFARS. Specific to the authority to support a humanitarian or peacekeeping operation, the simplified acquisition threshold can be increased to double the current basic simplified acquisition threshold, currently $150,000 as specified in FAR 2.101, but only when the purchase is made, or the contract is awarded and performed, outside the United States. There is no comparable authority to increase the micropurchase threshold for acquisitions in support of a humanitarian or peacekeeping operation.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any requirements on U. S. small businesses. The statute applies only to purchases made, or contracts awarded and performed, outside the United States and only to those acquisitions that directly support a humanitarian or peacekeeping operation. Therefore, an initial regulatory flexibility analysis has not been performed.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D032) in correspondence.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

Pursuant to 41 U.S.C. 1707 (formerly 41 U.S.C. 418b) and FAR 1.501–3(b), a determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the statutory authority for doubling the simplified acquisition threshold in support of a humanitarian or peacekeeping operation is not included in the DFARS currently, and is, therefore, generally not known to be available. It is imperative that DoD contracting officers be aware of this threshold for immediate implementation in DoD acquisitions. However, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 202 and 218

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202 and 218 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202 and 218 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. In section 202.101, add in alphabetical order the definition ''Simplified acquisition threshold'' to read as follows:

202.101 Definitions.

* * * * *

Simplified acquisition threshold, in addition to the meaning at FAR 2.101, means $300,000 when soliciting or awarding contracts to be awarded and performed outside the United States, or making purchases outside the United States, for acquisitions of supplies and services that, as determined by the head of the contracting activity, are to be used to support a humanitarian or peacekeeping operation, as defined at FAR 2.101.

PART 218—EMERGENCY ACQUISITIONS

218.270 [Redesignated as 218.271]

■ 3. Redesignate section 218.270 as section 218.271 and add new section 218.270 to read as follows:

218.270 Humanitarian or peacekeeping operation.

The term ''humanitarian or peacekeeping operation'' is defined at FAR 2.101. In accordance with 10 U.S.C. 2302(7), when a humanitarian or peacekeeping operation is declared, the simplified acquisition threshold is raised to $300,000 for DoD purchases that are awarded and performed, or purchases that are made, outside the United States in support of that operation. See 202.101.

[FR Doc. 2011–18380 Filed 7–22–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 237 and 252

RIN 0750–AG88

Defense Federal Acquisition Regulation Supplement; Prohibition on Interrogation of Detainees by Contractor Personnel (DFARS Case 2010–D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1038 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010. Section 1038 prohibits contractor personnel from interrogating detainees under the control of DoD.

DATES: *Effective Date:* July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule at 75 FR 67632 on November 3, 2010, to implement section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 1038 prohibits contractor personnel from interrogating detainees under the control of the Department of Defense. It also allows the Secretary of Defense to waive the prohibition for a limited period of time, with limited redelegation authority, if determined necessary to the national security interests of the United States. The interim rule added coverage at DFARS 237.173 and a new clause at DFARS 252.237–7010 that prescribes policies prohibiting interrogation of detainees by contractor personnel, as required by section 1038 of the NDAA for Fiscal Year 2010. The DFARS also covers permissible support roles for contractors by providing that contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of, and advisors to, interrogations, if the contractor personnel meet the criteria provided by DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix *(http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf);* DoD Directive 2310.01E, The Department of Defense Detainee Program *(http://www.dtic.mil/whs/directives/corres/pdf/231001p.pdf);* and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning *http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf.*

The public comment period closed on January 3, 2011. Three respondents provided comments on the interim rule.

II. Discussion and Analysis

A summary of the comments received and their analysis grouped by category follows.

A. Eliminate Waiver Authority

Comment: Three respondents provided comments supporting the idea that establishing an effective system of managing and overseeing contractors supporting interrogations must be accorded the highest priority. However, the respondents did not support the provision at DFARS 237.173–4 that allows the Secretary of Defense to waive the prohibition on contractor interrogations for up to 60 days on the grounds of national security interests. The respondents considered the function to be inherently governmental, and one that should never be performed by contractor personnel.

Response: Section 1038 of the statute specifically provides the Secretary of Defense authority to waive, for a limited time, the prohibition on interrogation of detainees by contractor personnel. Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of detainees, provided that appropriately qualified and trained DoD personnel (military or civilian) are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under DoD policy. Such personnel are subject to the same laws, rules, procedures, and policies pertaining to detainee operations and interrogations as those that apply to Government personnel in such positions in such interrogations (DFARS 237.173–3). Accordingly, no change has been made to the DFARS in response to these comments.

B. Penalties and Compliance

Comment: One respondent stated that DoD must prescribe a clear set of penalties for any violation of the new policy and recommended civil and criminal fines, imprisonment, the withholding of contract award fees, contract termination, and/or suspension and debarment.

Response: DoD has no authority to write civil or criminal penalties into the DFARS. Contracting officers have considerable discretion to exercise the usual broad range of contractual remedies, *e.g.,* withholding contract award fees, contract termination, or suspension and/or debarment. Accordingly, no change has been made to the DFARS in response to this comment.

Comment: One respondent expressed concern that there would be attempts to evade the new policy by transferring detainees to the custody of non-DoD agencies or foreign governments that are not governed by the DFARS limitations. The respondent also suggested that similar coverage at FAR 7.503(c)(8) should be considered.

Response: The acquisition regulations are written based on the presumption that Government employees act in good faith and in accordance with acquisition regulations and the law. Further, since the coverage at FAR 7.503(c)(8) lists ''the direction and control of intelligence and counter-intelligence operations'' as an example of an inherently governmental function, there would be no value added by reiterating this language in the DFARS.

C. Clarity of Definitions

Comment: One respondent recommended clarification of the definition of ''detainee'' in 237.173–2, which the respondent considered to be silent on the matter of whether the term ''hostilities'' (which is included in the definition of ''detainee'') includes situations in which there has not been a formally declared war (*e.g.,* the detainee is classified as an unlawful combatant rather than a prisoner of war). The respondent noted that the definition's qualifier, ''this includes but is not limited to,'' suggests a broad definition for ''hostilities.''

Response: The term ''detainee'' is defined at 237.173–2 as ''any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.'' This definition was derived from the ''detainee'' definition in the governing directive,

DoDI 2310.01E, The Department of Defense Detainee Program, dated September 5, 2006. Paragraph 2.2 of the directive notes ''This Directive applies during all armed conflicts, however such conflicts are characterized, and in all other military operations.'' In addition, paragraph E.2.1. of DoDI 2310.01E notes that the definition of ''detainee'' includes ''unlawful enemy combatants.'' Accordingly, DoD has determined that clarification is not necessary, and no change has been made to the DFARS definition in response to this comment.

Comment: One respondent recommended clarifying the definition of ''interrogation of detainees'' in 237.173–2 by adding the same qualifer, *i.e.,* ''this includes, but is not limited to,'' as is found in the definition of ''detainee.'' The respondent stated that a difference between the two definitions could lead to confusion over whether this includes any other sort of non-''systematic,'' ''formal,'' or ''official'' process of ''questioning,'' or questioning not done ''for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements'' (see 237.173–2).

Response: The definition of ''interrogation of detainees'' was derived from the definition for ''intelligence interrogations'' in DoDD 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning. This directive consolidates existing DoD policies, including the requirement for humane treatment during all intelligence interrogations, and speaks of interrogations exlusively in terms of the purpose of ''obtaining reliable information to satisfy foreign intelligence collection requirements.'' Accordingly, any questioning done for a purpose other than ''obtaining reliable information to satisfy foreign intelligence collection requirements'' is outside the scope of allowable activities under DoD policy. Accordingly, no change has been made to the DFARS definition in response to this comment.

D. Prohibition on Specific Type of Torture

Comment: One respondent proposed that water torture be banned. The respondent also proposed to make the Federal Government responsible when violations of human rights occur and recommended banning all torture and procedures that allow torture to occur.

Response: As noted previously, DoDD 3115.09 consolidates existing DoD policies, including the requirement for humane treatment during all intelligence interrogations for the purpose of gaining intelligence from captured or detained personnel. It is DoD policy that no person in the custody or physical control of DoD or detained in a DoD facility shall be subject to cruel, inhumane, or degrading treatment or punishment as defined in Title XIV of Public Law 109–163, also known as ''The Detainee Treatment Act of 2005.'' Accordingly, no change has been made to the DFARS in response to this comment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* applies to this rule. DoD prepared a final regulatory flexibility analysis (FRFA) that is summarized as follows:

The objective of this rule is to implement section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). This statute provides that no enemy prisoner of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of DoD, or otherwise under detention in a DoD facility in connection with hostilities, may be interrogated by contractor personnel. It also allows the Secretary of Defense to waive the prohibition for a limited period of time, with limited redelegation authority, if determined necessary to the national security interests of the United States.

In Fiscal Year 2009, the latest year for which complete information is available, DoD awarded contracts for intelligence-related requirements to only 255 unique Data Universal Numbering System (DUNS) numbers. Of this total, there were 143 unique DUNS numbers for small business concerns.

This rule only prescribes policies that prohibit interrogation of detainees by contractor personnel. DoD anticipates that there will be no additional costs imposed on small businesses.

There is no reporting or recordkeeping requirement established by this rule. This rule does not duplicate, overlap, or conflict with any other Federal rules.

Interested parties may obtain a copy of the FRFA from the point of contact named herein. A copy of the FRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 237 and 252, which was published at 75 FR 67632 on November 3, 2010, is adopted as a final rule without change.

[FR Doc. 2011–18381 Filed 7–22–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA594

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska

(GOA). This action is necessary to prevent exceeding the 2011 total allowable catch (TAC) of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 20, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2011 TAC of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central GOA is 150 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011), and as posted as the 2011 Rockfish Program Allocations at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm.*

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2011 TAC of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 125 mt, and is setting aside the remaining 25 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish for catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 18, 2011.

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

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

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

Dated: July 20, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18722 Filed 7–20–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 142
Monday, July 25, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–559; Airspace Docket No. 11–ASO–23]

Proposed Amendment of Class E Airspace; Fayette, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Fayette, AL, as the Fayette Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Richard Arthur Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the airport's geographic coordinates and note the name change to Richard Arthur Field.

DATES: Comments must be received on or before September 8, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–559; Airspace Docket No. 11–ASO–23, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–559; Airspace Docket No. 11–ASO–23) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–559; Airspace Docket No. 11–ASO–23.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Richard Arthur Field, Fayette, AL. Airspace reconfiguration is necessary due to the decommissioning of the Fayette NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates for Richard Arthur Field also would be adjusted to coincide with the FAAs aeronautical database. Also, the airport name would be changed from Richard Arthur Field Airport to Richard Arthur Field.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Richard Arthur Field, Fayette, AL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO AL E5 Fayette, AL [Amended]

Richard Arthur Field, AL
(Lat. 33°42′33″ N., long. 87°48′55″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Richard Arthur Field.

Issued in College Park, Georgia, on July 14, 2011.

Mark D. Ward,

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

[FR Doc. 2011–18660 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–102; Airspace Docket No. 11–ASO–39]

Proposed Amendment of Class E Airspace; Cleveland, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Cleveland, MS, as the Renova Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Cleveland Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 8, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–102; Airspace Docket No. 11–ASO–39, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–102; Airspace Docket No. 11–ASO–39) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–102; Airspace Docket No. 11–ASO–39.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Cleveland Municipal Airport, Cleveland, MS. Airspace reconfiguration is necessary due to the decommissioning of the Renova NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Cleveland Municipal Airport, Cleveland, MS.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO MS E5 Cleveland, MS [Amended]

Cleveland Municipal Airport, MS
(Lat. 33° 45′40″ N., long. 90° 45′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Cleveland Municipal Airport .

Issued in College Park, Georgia, on July 14, 2011.

Mark D. Ward,

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

[FR Doc. 2011–18662 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–375; Airspace Docket No. 11–AEA–9]

Proposed Establishment of Class E Airspace; Gordonsville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Gordonsville, VA, to accommodate new Standard Instrument Approach Procedures at Gordonsville Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 8, 2011.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–375; Airspace Docket No. 11–AEA–9, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–375; Airspace Docket No. 11–AEA–9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–375; Airspace Docket No. 11–AEA–9.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Gordonsville, VA, providing the controlled airspace required to support the new RNAV GPS standard instrument approach procedures for Gordonsville Municipal Airport. Controlled airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations at the airport.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Gordonsville Municipal Airport, Gordonsville, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA VA E5 Gordonsville, VA [New]

Gordonsville Municipal Airport
(Lat. 38° 9′22″ N., long. 78° 9′57″ W.)

That airspace extending upward from 700 feet above the surface within a 9.7- mile radius of the Gordonsville Municipal Airport.

Issued in College Park, Georgia, on July 11, 2011.

Mark D. Ward,

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

[FR Doc. 2011–18666 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–380; Airspace Docket No. 11–AEA–12]

Establishment of Class E Airspace; New Market, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at New Market, VA, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures developed for New Market Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 8, 2011.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–380; Airspace Docket No. 11–AEA–12, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–380; Airspace Docket No. 11–AEA–12) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–380; Airspace Docket No. 11–AEA–12.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to part 71 of Title 14, Code of Federal Regulations (14 CFR) to establish Class E airspace at New Market, VA to provide controlled airspace required to support the new standard instrument approach procedures for New Market Airport. Class E airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at New Market Airport, New Market, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA VA E5 New Market, VA [New]

New Market Airport, VA
(Lat. 38°39′21″ N., long. 78°42′29″ W.)

That airspace extending upward from 700 feet above the surface within a 14.8-mile radius of the New Market Airport.

Issued in College Park, Georgia, on July 15, 2011 .

Mark D. Ward,

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

[FR Doc. 2011–18665 Filed 7–22–11; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR PART 1420

[CPSC Docket No. CPSC–2011–0047]

Amendment to Standard for All-Terrain Vehicles; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') required the Consumer Product Safety

Commission (''Commission,'' ''CPSC,'' or ''we'') to publish, as a mandatory consumer product safety standard, the *American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements,* developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1–2007). We did so on November 14, 2008. 73 FR 67385. ANSI/SVIA has since issued a 2010 edition of its standard. In accordance with the CPSIA, we propose to amend the Commission's mandatory ATV standard to reference the 2010 edition of the ANSI/SVIA standard.[1]

DATES: Written comments must be received by October 11, 2011.

ADDRESSES: You may submit comments, identified by Docket No. [CPSC–2011–0047], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received go to: *http://www.regulations.gov.*

[1] The Commission voted 4–0–1 to approve publication of this notice of proposed rulemaking. Chairman Inez M. Tenenbaum and Commissioners Thomas H. Moore, Nancy A. Nord and Robert S. Adler voted for the proposed rule. Commissioner Ann M. Northup abstained from voting.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leland, Project Manager, Directorate for Economic Analysis, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7706; *eleland@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') directed the Commission to ''publish in the **Federal Register** as a mandatory consumer product safety standard the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1–2007).'' 15 U.S.C. 2089(a)(1), as added by section 232 of the CPSIA. Accordingly, on November 14, 2008, we published a final rule mandating ANSI/SVIA 1–2007 as a consumer product safety standard. 73 FR 67385. The final rule is codified at 16 CFR part 1420.

B. The Proposed Amendment

1. Procedure

Section 42(b) of the Consumer Product Safety Act (''CPSA'') provides that, if ANSI/SVIA 1–2007 is revised after the Commission has published a **Federal Register** notice mandating the standard as a consumer product safety standard, ANSI must notify the Commission of the revision, and the Commission has 120 days after it receives that notification to issue a notice of proposed rulemaking to amend the Commission's mandatory ATV standard ''to include any such revision that the Commission determines is reasonably related to the safe performance of [ATVs] and notify the Institute of any provision it has determined not to be so related.'' 15 U.S.C. 2089(b)(1) and (2). Thereafter, the Commission has 180 days after publication of the proposed amendment to publish a final amendment to revise the ATV standard. *Id.*

2. Changes From 2007 Edition

On March 16, 2011, ANSI notified us that in December 2010, ANSI approved a revised version of the ANSI/SVIA standard for four-wheel ATVs, ANSI/AVIA 1–2010.

We reviewed the changes from the 2007 version. Many changes are minor revisions to the wording in the standard. We consider the substantive changes to be: (1) Elimination from the scope section, a provision calling for expiration of the definition and requirements for the Y–12+ youth ATV age category on July 28, 2011; (2) a change in how to calculate the speed for the braking test of youth ATVs; (3) a change in the force applied to passenger handholds during testing; (4) the addition of a requirement that youth ATVs shall not have a power take-off mechanism; (5) the addition of a requirement that youth ATVs shall not have a foldable, removable, or retractable structure in the ATV foot environment; (6) additional specificity concerning the location and method of operation of the brake control; (7) tightening the parking brake performance requirement by requiring the transmission to be in ''neutral'' during testing, rather than in ''neutral'' or ''park''; and (8) the requirement that tire pressure information be on the label, when the previous requirement could be interpreted to allow tire pressure information to be on the label, *or* in the owner's manual, *or* on the tires.

We were concerned initially that two changes to the ANSI/SVIA standard might reduce safety. These two changes were: (1) How the speed for the braking test of youth ATVs is calculated, and (2) the force applied to passenger handholds during testing. As discussed in sections B.2.a and b of this preamble, industry subsequently addressed one issue and is not opposed to addressing the second.

a. Change in Calculation of Speed for Brake Test of Youth ATVs

Section 7.2 of the 2010 edition of the ANSI/SVIA standard provides what appears to be a new formula for calculating the speed at which the braking tests for youth ATVs would be performed. As published, the 2010 formula would result in testing the brakes of some youth ATVs at much lower speeds than required under the 2007 edition of the standard. However, in a conversation with SVIA representatives on May 20, 2010, CPSC staff and SVIA discovered that this provision has a typographical error, and the new formula, in fact, applies only to the Y–6+ category ATV. This would not result in a significant change in the brake testing speed. ANSI has since printed a memorandum and an errata sheet and distributed them to past purchasers of the standard. The memorandum and errata sheet will be included in all future printings of the standard. We are satisfied with SVIA's response to this issue and do not believe that this change (as corrected) justifies excluding this provision from any amendment to the current mandatory consumer product safety standard.

b. Change in Force Applied to Passenger Handhold During Testing

Section 4.12 of the ANSI/SVIA standard relates to the testing of passenger handholds on Type II (tandem) ATVs. These ATVs are designed for two riders, with one rider seated behind the other. The ANSI/SVIA 1–2007 standard, which the mandatory standard incorporated, states that these handholds ''shall be designed in such a way that each is able to withstand, without failure or permanent deformation, a vertical force of 1000N (224 lbf) applied statically to the center of the surface of the handhold at a maximum pressure of 1 MPa (150 psi).'' The ANSI/SVIA 1–2010 revision indicates that the force applied to the handhold must be *upward.* Although the previous version of the standard could have been interpreted to mean that the test could be performed in either a downward or an upward position, or both, we believe that the addition of the word ''upward'' limits the test procedure, and we believe that the test should be applied in both directions.

SVIA has indicated that the upward vertical direction is consistent with typical loading of an ATV. However, SVIA also stated that SVIA is not opposed to revising the standard in the future to add a downward testing component, noting that such a change will be considered in the next revision of ANSI/SVIA 1–2010. We are satisfied with this response and do not believe that this change justifies excluding this provision from any amendment to the current mandatory consumer product safety standard.

c. The Y–12+ Youth Category

When the ANSI/SVIA 1–2007 voluntary standard was published, industry intended that the Y–12+ youth ATV category would expire in July 2011, leaving the Y–6+ and Y–10+ categories of youth ATVs in the marketplace, along with the T (Transition Model) category ATV for operators age 14 years or older. The scope section of the 2007 edition of the ANSI/SVIA standard provides: ''The definition and other requirements of the standard for Category Y–12+ ATVs shall expire four (4) years after the date this standard is approved.'' However, SVIA has indicated that it eliminated this provision from the scope section in the 2010 revision of the standard because it intends to continue to allow the Y–12+ category due to the impact of the CPSIA lead content requirements on the production and sale of Y–6+ and Y–10+ category ATVs. We do not consider the elimination of this scope provision to be a problem. The standard did not require manufacturers to stop making Y–12+ ATVs but provided that after a certain date, the definition of that category and other requirements would expire. If this category of ATVs will continue to be available, we believe that it is appropriate to revise the scope section to eliminate this provision as the 2010 revision does.

d. Revisions and the Safe Performance of ATVs

We do not believe that any of the revisions in the ANSI/SVIA 1–2010 standard would diminish the safety of ATVs. Many changes would likely have no direct impact on safety. Whether any of the changes in the 2010 edition of the ANSI/SVIA standard are ''reasonably related to the safe performance of ATVs'' depends on the criteria for measuring or determining the meaning of ''reasonably related'' and ''safe performance of ATVs.'' Although some changes could be considered more related than others to the safe performance of ATVs, such as the requirement that there be no power take-offs on youth ATVs, all, in fact, could be related to the safe performance because the changes improve the standard's clarity and consistency and, in that way, advance the standard.

Given the relatively minor and editorial nature of most of the changes meant to improve the standard's clarity and consistency, it makes sense to revise the Commission's mandatory standard to incorporate all of the provisions of the ANSI/SVIA 1–2010 version to avoid there being two slightly different versions of the standard, the current mandatory standard and the revised voluntary standard. This could lead to confusion in the marketplace, particularly for companies not affiliated with SVIA; for companies that are new to the market; for foreign companies that desire to enter or maintain a place in the U.S. market for ATVs; and for third party testing conformity assessment bodies.

3. Brief Description of the Proposed Rule

The proposed rule would revise § 1420.3, ''Requirements for four-wheel ATVs.'' The current rule refers to the ANSI/SVIA 1–2007 standard, so the proposed rule would replace this reference with the ANSI/SVIA 1–2010 version.

C. Effective Date

The CPSIA provides a timetable for the Commission to issue a notice of proposed rulemaking (within 120 days of receiving notification of a revised ANSI/SVIA standard) and to issue a final rule (within 180 days of publication of the proposed rule), but it does not set an effective date. We propose that the amendment updating the ANSI/SVIA standard take effect 30 days after publication of a final rule. The differences between the 2007 version of the standard and the 2010 version are relatively minor and largely editorial. Because the 2010 version of the ANSI/SVIA standard is already in effect as a voluntary standard, we expect that very few manufacturers would need to make any modifications to meet a mandatory standard that references ANSI/SVIA 1–2010.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. Because section 42(a)(1) of the CPSA required the Commission to publish ANSI/SVIA 1–2007 as a consumer product safety standard within 90 days of enactment of the CPSIA, we did not issue a notice of proposed rulemaking and, therefore, did not prepare a regulatory flexibility analysis. Moreover, section 42(a)(1) of the CPSA required the Commission to publish ANSI/SVIA 1–2007 as a consumer product safety standard ''[n]otwithstanding any other provision of law.'' 15 U.S.C. 2089(a). The Commission interpreted this statutory language to mean that provisions that might ordinarily apply to a rulemaking proceeding, such as those under the RFA, did not apply to the rulemaking mandating ANSI/SVIA 1–2007.

In contrast, section 42(b)(2) of the CPSA requires the Commission to issue a notice of proposed rulemaking when it amends its ATV standard to reflect a revision to the ANSI/SVIA standard. Section 42(b)(4) of the CPSA provides that when the Commission amends its ATV standard to reflect revisions to the ANSI/SVIA standard, the procedures and findings required under sections 7 and 9 of the CPSA do not apply to such a rulemaking. However, this section does not explicitly exempt such a rulemaking from the requirements of the RFA. Therefore, we examined the potential impact on small business that could occur from amending our ATV standard to reference the 2010 version of the ANSI/SVIA standard.

Our analysis indicates that, as of February 2011, 45 ATV manufacturers or importers had CPSC-approved action plans. (Section 42(a)(2) of the CPSA requires that ATV manufacturers or distributors have an ATV action plan

filed with the Commission, in addition to complying with the mandated ATV standard). However, two of the 45 companies appear to have stopped manufacturing or importing ATVs. Of the remaining 43 companies, 17 are either large domestic manufacturers or subsidiaries of foreign manufacturers. The remaining 26 companies could be small manufacturers or importers. However, in several cases there was not sufficient readily available information to make this determination. According to the criteria established by the U.S. Small Business Administration, manufacturers are considered to be small if they have fewer than 500 employees. Importers of ATVs that are not actually manufacturers would be considered to be wholesalers and would be considered to be small if they have fewer than 100 employees.

For the most part, the differences between the 2007 and 2010 editions of the ANSI/SVIA standard are relatively minor modifications or updates and are not expected to have a significant impact on any manufacturers or importers of ATVs. Some changes to the text of the ANSI/SVIA standard do not alter the actual requirements of the standard. For example, in the 2010 standard, the phrase ''Also called the engine starter'' was deleted from the definition of ''electric starter.'' If any revisions would affect manufacturers, the adjustments that would be required to comply with the 2010 standard would be relatively easy to make, such as some changes in the design or warning labels or hangtags. Other changes, such as the restrictions on the use of power take-offs (devices that allow the engine of a vehicle to power an accessory device or other equipment) and non-fixed structures on Category Y ATVs, the minor changes to the test procedures for service brakes on Category Y ATVs and parking brakes on other ATVs, are unlikely to affect many ATV models. For ATV models that would be affected, the required modifications should be relatively easy to make.

Therefore, we conclude that amending the mandatory ATV standard to reference the 2010 edition of the ANSI/SVIA ATV standard would not have a significant impact on a substantial number of small businesses or other small entities.

E. Paperwork Reduction Act

This proposed amendment would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

F. Environmental Considerations

The Commission's regulations provide a categorical exemption for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement as they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This proposed amendment falls within the categorical exemption.

G. Request for Comments and Information

The Commission is interested in receiving information, comments, and/or data on the following issues, some of which are beyond the scope of the immediate revisions to the mandatory standard and will be relevant to future ATV rulemaking:

i. Whether the proposed revisions to ANSI/SVIA 1–2007 by ANSI/SVIA 1–2010 are likely to enhance the clarity of the ANSI standard;

ii. The size of the companies (both manufacturers and importers) that have filed action plans with the Commission that would assist with determining whether these companies should be considered small businesses under the Regulatory Flexibility Act;

iii. The effect of not eliminating from the scope of the standard the expiration of the definition and requirements for the Y–12+ ATV age category on July 28, 2011, specifically, but not limited to:

(a) The relationship of the need for continued production of Y–12+ ATV age category and the Consumer Product Safety Improvement Act's (CPSIA) lead content requirements on ATVs intended primarily for youth including the effect of the two stays of enforcement issued by the Commission on the availability of Y–6+ and Y–10+ models (May 1, 2009—74 FR 22154 and Feb. 1, 2011—76 FR 5565);

(b) The number of Y–6+ and Y–10+ models in the marketplace prior to August 2008 and the number available in 2011;

(c) Whether this revision is likely to result in children younger than 12 years old riding Y–12+ ATVs;

(d) The safety of six to nine year old children when using a Y–12+ ATV;

(e) Whether this revision implicitly approves the use of a Y–12+ ATV when a Y–6+ ATV or Y–10+ ATV is not available;

(f) Whether there are any state laws prohibiting the use of a Y–12+ ATV by children younger than 12 including the effects on ATV-related injuries or deaths in those states that have new or updated mandated minimum age requirements for ATV operation since the adoption of ANSI/SVIA 1–2007;

(g) Whether rejecting this revision is likely to result in an increase of the availability of Y–6+ and Y–10+ model ATVs;

(h) Whether rejecting this revision is likely to result in children younger than 12 years old riding adult model ATVs;

(i) The comparative safety of Y–12+ and adult model ATVs when used by children younger than 12 years old;

iv. Other potential improvements on braking test requirements for all ATV categories, (such as the change to the ANSI/SVIA 1–2010 proposal for Y–6+ ATVs);

v. The ANSI/SVIA 1–2010 limitation of the testing standard for passenger handholds by specifying that the force applied must be upward;

(a) Not adding a downward testing component during this revision;

(b) Adding a downward testing component during the next revision;

vi. Any other potential improvements to ATV safety that were not included in the proposed revision to the voluntary standard including, but not limited to:

(a) ATV rollover protection systems or predictive functional controls;

(b) Modifications with respect to the maximum speed of ATVs;

(c) Child-proof ignition safety locks for adult-sized ATVs.

List of Subjects in 16 CFR Part 1420

Administrative practice and procedure, Business and industry, Consumer protection, Imports, Incorporation by reference, Information, Infants and children, Labeling, Law enforcement, Recreation and recreation areas, Reporting and recordkeeping requirements, Safety.

For the reasons stated in the preamble, the Commission proposes to amend 16 CFR part 1420 as follows:

PART 1420—REQUIREMENTS FOR ALL TERRAIN VEHICLES

1. The authority citation for part 1420 continues to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Public Law 110–314, § 232, 122 Stat. 3016 (August 14, 2008).

2. In the second sentence of § 1420.1, remove the words, ''April 13, 2009,'' and add in their place ''(date 30 days after publication of a final rule in the Federal Register).''

3. Revise § 1420.3 to read as follows:

§ 1420.3 Requirements for four-wheel ATVs.

(a) Each ATV shall comply with all applicable provisions of the American National Standard for Four-Wheel All-Terrain Vehicles (American National Standards Institute, Inc. ANSI/SVIA

1–2010), approved December 23, 2010. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, California 92618–3806; telephone 949–727–3727 ext.3023; *http://www.svia.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Dated: July 19, 2011.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–18552 Filed 7–22–11; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0426; FRL–9442–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Permits by Rule and Regulations for Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on August 31, 1993, July 22, 1998, and October 5, 2010. These revisions amend existing sections and create new sections in Title 30 of the Texas Administrative Code (TAC), chapter 116—Control of Air Pollution by Permits for New Construction or Modification. The August 31, 1993, revision creates two new sections at 116.174 and 116.175 for the use of emission reductions as offsets in new source review permitting. The July 22, 1998, revision creates new section 116.116(f) allowing for the use of Discrete Emission Reduction Credits (DERC) to exceed emission limits in permits (permit allowables) and amends section 116.174 to update internal citations to other Texas regulations. The October 5, 2010, revision amends section 116.116(f) to update internal citations to other Texas regulations. The Commission submitted this amendment to EPA to process as a revision to the Texas SIP. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 of the Federal Clean Air Act (the Act).

DATES: Written comments must be received on or before August 24, 2011.

ADDRESSES: Comments may be mailed to Ms. Erica Le Doux, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Erica Le Doux, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7265; fax number 214–665–6762; e-mail address *ledoux.erica@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 relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant 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: July 12, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–18576 Filed 7–22–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 205, 208, 212, 213, 214, 215, 216, 252

RIN 0750–AH11

Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Only One Offer (DFARS Case 2011–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense FAR Supplement (DFARS) to address acquisitions using competitive procedures in which only one offer is received. With some exceptions, the contracting officer must resolicit for an additional period of at least 30 days, if the solicitation allowed fewer than 30 days for receipt of proposals and only one offer is received. If a period of at least 30 days was allowed for receipt of proposals, the contracting officer must determine prices to be fair and reasonable through price or cost analysis or enter negotiations with the offeror.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 23, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2011–D013, using any of the following methods:

- *Regulations.gov. http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2011–D013'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D013.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D013'' on your attached document.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D013 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, *Attn:* Ms. Amy Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

This DFARS case addresses DoD policy with regard to acquisitions using competitive procedures in which only one offer is received. This case was initiated to implement the initiative on promoting real competition that was presented by the Under Secretary of Defense for Acquisition, Technology, & Logistics in a memorandum dated November 3, 2010. This memorandum was further implemented by memoranda from the Director, Defense Procurement and Acquisition Policy, dated November 24, 2010, and April 27, 2011.

In order to promote competition, the proposed rule adds a new section at DFARS 215.371. DFARS 215.371 states the DoD policy that adequate price competition does not exist if only one offer is received. When issuing a competitive solicitation, the contracting officer must specify in the solicitation what cost or pricing data may be required if only one offer is received.

If only one offer is then received, and the solicitation allowed fewer than 30 days for receipt of offers, then the contracting officer must consider whether the statement of work should be revised to promote more competition, and then resolicit, allowing an additional period of at least 30 days for receipt of proposals.

If the solicitation allowed at least 30 days for receipt of proposals and only one offer is received, the contracting officer must obtain from the offeror, in accordance with the solicitation, any data necessary to establish a fair and reasonable price. The contracting officer shall then determine through cost or price analysis, as appropriate, that the price is fair and reasonable through price or cost analysis or enter negotiations with the offeror. The basis for these negotiations shall be either certified cost or pricing data or other than certified cost or pricing data, as appropriate (see FAR 15.403–1(c), 215.403–1(c), and FAR 15.403–3(b)). The negotiated price should not exceed the offered price.

The head of the contracting activity is authorized to waive the requirement to resolicit for an additional period of at least 30 days. This waiver authority can be delegated to a level no lower than one level above the contracting officer.

The rule proposes exceptions for acquisitions that are at or below the simplified acquisition threshold; or acquisitions that are in support of contingency, humanitarian, or peacekeeping operations, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. The applicability of an exception does not eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

This proposed rule applies a more stringent policy for determination of adequate price competition than is allowed by FAR 15.403–1(c)(1)(ii). FAR 15.403–1(c)(1)(ii) provides that if only one offer is received, the contracting officer may nevertheless determine that there was adequate price competition, if the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition and this determination is approved at a level above the contracting officer. This rule proposes that, unless an exception applies, if only one offer is received, the contracting officer shall not use the standard at FAR 15.403–1(c)(1)(ii) to determine that the offered price is based on adequate competition

The rule proposes two provisions. The provision at 252.215–70WW, Notice of Intent to Resolicit, notifies offerors that the solicitation provides offerors fewer than 30 days to submit proposals and that, in the event that only one offer is received in response to the solicitation, the contracting officer may cancel the solicitation and resolicit for an additional period of at least 30 days.

The provision at 252.215–70XX, Only One Offer, notifies offerors that if only one offer is received and the contracting officer decides to conduct negotiations, then the offeror must provide the data specified in FAR 52.215–20. The negotiated price should not exceed the offered price. These provisions must also be used in acquisitions of commercial items conducted using part 212 competitive procedures.

The proposed rule also applies to acquisitions under subpart 208.4, part 212, subpart 213.5, part 214, and subpart 216.5.

II. Executive Orders 12866 and 13563

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

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule does not impose economic burdens on offerors or contractors. However, DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

The objective of the rule is to promote competition by implementing DoD policy with regard to acquisitions when only one offer is received in response to a solicitation issued using competitive procedures. The purpose and effect of this rule is to promote real competition by ensuring that adequate time is allowed for receipt of offers; and ensuring that prices are fair and reasonable when adequate time has been allowed, but nevertheless, only one offer is received in response to a competitive solicitation.

The legal basis is 41 U.S.C. 1303 and 48 CFR chapter 1.

The proposed rule affects only those small entities that respond to a Federal competitive solicitation and no other offer is received.

The Federal Procurement Data System provided the following data for FY 2010 on DoD competitive awards valued above $150,000:

DoD Competitive Awards Valued Above $150,000

	All competitive > SAT	Only one offer	1 Offer/small business
New Contracts or Purchase Orders	54,240	14,747	3,542
New Orders, FSS	4,246	1,654	818
New Orders, non-FSS	12,883	2,935	788
Total	71,369	19,336	5,148

The proposed rule imposes no reporting, recordkeeping, or other information collection requirements. The submission of certified cost or pricing data or other than certified cost or pricing data is covered in FAR subpart 15.4 and associated clauses in FAR 52.215, OMB clearance number 9000–013.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives to the rule that would adequately implement the DoD policy. DoD has exempted acquisitions below the simplified acquisition threshold. There is no significant economic impact on small entities and any impact of this rule on small business is expected to be predominantly positive, by allowing more opportunity for competition.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D013) in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not impose any additional information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (5 U.S.C. chapter 35). The submission of certified cost or pricing data or other than certified cost or pricing data required for negotiation is covered in FAR 15.4 and associated clauses in FAR 52.215, OMB clearance number 9000–013.

List of Subjects in 48 CFR Parts 205, 208, 212, 213, 214, 215, 216, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 205, 208, 212, 213, 214, 215, 216, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 205, 208, 212, 213, 214, 215, 216, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

2. Amend section 205.203 by adding paragraph (S–70) to read as follows:

205.203 Publicizing and response time.

* * * * *

(S–70) When using competitive procedures, if a solicitation allowed fewer than 30 days for receipt of offers and resulted in only one offer, the contracting officer shall resolicit, allowing an additional period of at least 30 days for receipt of offers, except as provided in 215.371 (d) and (e).

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Amend section 208.405–70 by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding new paragraph (d) to read as follows:

* * * * *

(c)(1) An order exceeding $150,000 is placed on a competitive basis only if the contracting officer provides a fair notice of the intent to make the purchase, including a description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to—

(i) As many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that offers will be received from at least three contractors that can fulfill the requirements, and the contracting officer—

(A)(*1*) Receives offers from at least three contractors that can fulfill the requirements; or

(*2*) Determines in writing that no additional contractors that can fulfill the requirements could be identified despite reasonable efforts to do so (documentation should clearly explain efforts made to obtain offers from at least three contractors); and

(B) Ensures all offers received are fairly considered; or

(ii) All contractors offering the required supplies or services under the applicable multiple award schedule, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(2) If only one offer is received, follow the procedures at 215.371.

(d) Use the provisions at 252.215–70WW, Notice of Intent To Resolicit, and 252.215–70XX, Only One Offer, as prescribed at 215.408(3) and (4), respectively.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

4. Add new section 212.205 to read as follows:

212.205 Offers.

(c) When using competitive procedures, if the solicitation allows fewer than 30 days response time and only one offer is received, the contracting officer shall follow the procedures at 215.371.

5. Amend section 212.301 by adding paragraph (f)(xvi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)* * *

(xvi) Use the provisions at 252.215–70WW, Notice of Intent To Resolicit, and 252.215–70XX, Only One Offer, as prescribed at 215.408(3) and (4), respectively.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

6. Add new section 213.003 to read as follows:

213.003 Policy.

(g)(2) For acquisitions that exceed the simplified acquisition threshold but are utilizing competitive simplified acquisition procedures under the Test Program for Certain Commercial Items, as described in FAR subpart 13.5, follow

the procedures at 215.371 if only one offer is received.

PART 214—SEALED BIDDING

7. Add new section 214.201–6 to read as follows:

214.201–6 Solicitation provisions.

(2) Use the provisions at 252.215–70WW, Notice of Intent To Resolicit, and 252.215–70XX, Only One Offer, as prescribed at 215.408(3) and (4), respectively.

8. Add new section 214.209 to read as follows:

214.209 Cancellation of invitations before opening.

If an invitation for bids allowed fewer than 30 days for receipt of offers, and resulted in only one offer, the contracting officer shall cancel and resolicit, allowing an additional period of at least 30 days for receipt of offers, as provided in 215.371.

9. Revise section 214.404–1 to read as follows:

214.404–1 Cancellation of invitations after opening.

(1) The contracting officer shall make the written determinations required by FAR 14.404–1(c) and (e).

(2) If only one offer is received, follow the procedures at 215.371.

10. Add new sections 214.408 and 214.408–1 to read as follows:

214.408 Award.

214.408–1 General.

(b) For acquisitions that exceed the simplified acquisition threshold, if only one offer is received, follow the procedures at 215.371.

PART 215—CONTRACTING BY NEGOTIATION

11. Add new section 215.371 to read as follows:

215.371 Only one offer.

(a) It is DoD policy that the circumstance of ''reasonable expectation that two or more offerors, competing independently, would submit priced offers,'' as further described at FAR 15.403–1(c)(1)(ii), does not constitute adequate price competition if only one offer is received.

(b) Additional cost or pricing data may be required if the contracting officer only receives one offer, when two or more offers were expected. Therefore, when using competitive procedures, except as provided in paragraphs (d) and (e) of this section, the contracting officer shall—

(1) Use FAR 15.402 and 15.403, except for 15.403-(c)(1)(ii), to determine what cost or pricing data may be required if only one offer is received (see additional guidance at PGI 215.371); and

(2) Identify the data that may be needed by including FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in the solicitation in accordance with the clause prescription at 215.408(4)(ii).

(c) Except as provided in paragraphs (d) and (e) of this section, if competitive procedures were used and only one offer is received—

(1) If the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer shall—

(i) Consult with the requiring activity as to whether the statement of work should be revised in order to promote more competition; and

(ii) Resolicit, allowing an additional period of at least 30 days for receipt of proposals.

(2) If the solicitation allowed at least 30 days for receipt of proposals, or if the requirement of paragraph (c)(1)(ii) of this section has been waived in accordance with paragraph (d) of this section, the contracting officer shall—

(i) Obtain from the offeror any data necessary to establish a fair and reasonable price in accordance with FAR provision 52.215–20; and

(ii) Determine through cost or price analysis, as appropriate, that the offered prices are fair and reasonable or enter into negotiations with the offeror. If the contracting officer decides to enter negotiations, the negotiated price should not exceed the offered price.

(d) *Waiver.*

(1) The head of the contracting activity is authorized to waive the requirement of paragraph (c)(1) of this section, to resolicit for an additional period of at least 30 days.

(2) This waiver authority cannot be delegated below one level above the contracting officer.

(e) *Exceptions.*

(1) The requirements of this section do not apply to acquisitions—

(i) At or below the simplified acquisition threshold; or

(ii) In support of contingency, humanitarian or peacekeeping operations, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

(2) The applicability of an exception in paragraph (e)(1) of this section does not eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

12. Amend section 215.403–1 by revising paragraph (c) to read as follows:

215.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) *Standards for exceptions from cost or pricing data requirements.*

(1) *Adequate price competition.*

(A) For acquisitions under dual or multiple source programs:

(*1*) The determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(*2*) Adequate price competition normally exists when—

(*i*) Prices are solicited across a full range of step quantities, normally including a 0–100 percent split, from at least two offerors that are individually capable of producing the full quantity; and

(*ii*) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404–1(b)).

(B) In accordance with 215.371, if only one offer is received, the contracting officer shall not use the standard at FAR 15.403–1(c)(1)(ii) to determine that the offered price is based on adequate competition.

13. Amend section 215.408 by adding paragraphs (3) and (4) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) Use the provision at 252.215–70WW, Notice of Intent to Resolicit, in competitive solicitations that will be solicited for fewer than 30 days, unless the requirement is waived in accordance with 215.371(d) or an exception at 215.371(e) applies.

(4)(i) Use the provision at 252.215–70XX, Only One Offer, in competitive solicitations unless the requirement is waived in accordance with 215.371(d) or an exception at 215.371(e) applies.

(ii) In solicitations that include 252.215–70XX, Only One Offer, also include the provision at FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, with any appropriate alternate as prescribed at FAR 15.408–1, but that provision will only take effect as specified in 252.215–70XX.

PART 216—TYPES OF CONTRACTS

14. Amend section 216.505–70 by revising paragraph (d) to read as follows:

216.505–70 Orders under multiple award contracts.

* * * * *

(d) When using the procedures in this subsection—

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) If only one offer is received, the contracting officer shall follow the procedures at 215.371.

(4) The competition requirements in FAR part 6 and the policies in FAR subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(5) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

15. Amend section 216.506 by adding paragraph (S–70) to read as follows:

216.506 Solicitation provisions and contract clauses.

* * * * *

(S–70) Use the provisions at 252.215–70WW, Notice of Intent to Resolicit, and 252.215–70XX, Only One Offer, as prescribed at 215.408(3) and (4), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Add new section 252.215–70WW to read as follows:

252.215–70WW Notice of Intent to Resolicit.

As prescribed at 215.408(3), use the following provision:

Notice of Intent to Resolicit (Date). This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and resolicit for an additional period of at least 30 days in accordance with 215.371(c)(1)(ii).

(End of provision).

17. Add new section 252.215–70XX to read as follows:

252.215–70XX Only One Offer.

As prescribed at 215.408(4), use the following provision:

Only One Offer (Date).

(a) The provision at FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data other Than Certified Cost or Pricing Data, with any alternate included in this solicitation, does not take effect unless the Contracting Officer notifies the offeror that only one offer was received.

(b) Upon notification that only one offer was received, the offeror shall provide any data requested by the Contracting Officer in accordance with FAR 52.215–20.

(c) If negotiations are conducted, the negotiated price should not exceed the offered price.

(End of provision).

[FR Doc. 2011–18379 Filed 7–22–11; 8:45 am]

BILLING CODE 5001–08p–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–AX47

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (CR Program) allocates BSAI crab resources among harvesters, processors, and coastal communities. Amendment 30 would amend the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and the CR Program to modify procedures for producing and submitting documents that are required under the arbitration system to resolve price, delivery, and other disputes between harvesters and processors. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be submitted on or before September 23, 2011.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX47'', by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 30, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), the categorical exclusion prepared for this action, and the Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov/sustainablefisheries.htm.*

FOR FURTHER INFORMATION CONTACT: Forrest R. Bowers, 907–586–7240.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Amendments 18 and 19 to the FMP amended the FMP to include the CR Program. Regulations

implementing the FMP, including the CR Program are located at 50 CFR Part 680.

Under the CR Program, NMFS issued quota share (QS) to holders of License Limitation Program (LLP) licenses and crew onboard vessels. Each year QS yields an exclusive harvest privilege for a portion of the total allowable catch called individual fishing quota (IFQ). Several types of QS are issued; Catcher Vessel Owner (CVO) QS was issued to owners of catcher vessels based on their participation in CR Program fisheries during designated qualifying years.

NMFS also issued processor quota share (PQS) under the CR Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ. This annual exclusive processing privilege is called individual processor quota (IPQ). CVO QS yields Class A and Class B IFQ. Class A IFQ is required to be delivered to a processor with matching IPQ within specific geographic regions. Class B IFQ can be delivered to any processor in any geographic region. Ninety percent of the IFQ derived from CVO QS is Class A IFQ, and the remaining 10 percent is Class B IFQ. These requirements ensure that catch continues to be delivered to processors and communities with historic investment in the fisheries.

Because harvesters holding Class A IFQ are required to deliver to processors holding IPQ for a specific crab fishery within a specific geographic region, it is possible that this requirement could adversely affect price and delivery negotiations among harvesters and processors. To address potential price and delivery disputes that may arise between Class A IFQ holders and IPQ holders, the Program includes an arbitration system to fairly and equitably resolve price, delivery terms, performance standards, and other disputes in the event that Class A IFQ and IPQ holders are unable to reach agreement on those terms.

To facilitate the arbitration proceedings, the arbitration system establishes a series of contractual requirements that Class A IFQ and IPQ holders must meet. These contracts include requirements to hire: (1) A market analyst, who provides a pre-season market report of likely market conditions for each crab fishery to aid in price negotiations and arbitrations; (2) a formula arbitrator, who prepares a non-binding price formula that describes the historic division of first whole-sale values among harvesters and processors that can be used in price negotiations and arbitrations; and (3) a contract arbitrator, who reviews the positions of the parties during an arbitration proceeding and issues a binding decision based on a last-best offer form of arbitration. As the CR Program has progressed, it has become clear that the existing requirements for the timing and content of the market report and non-binding price formula limit the effectiveness of the arbitration system. The timing for the preparation of these documents did not allow the most recent publically available market data to be considered when price negotiations were conducted, thereby limiting their utility.

Amendment 30, if approved, would modify four aspects of the arbitration system to improve its effectiveness by: (1) Allowing Class A IFQ and IPQ holders to establish contracts requiring the preparation of market reports and non-binding price formulas only if a crab fishery is open; (2) modifying the timeline for release of the non-binding price formula for the western Aleutian Islands golden king crab (WAG), and eastern Aleutian Islands golden king crab (EAG) fisheries; (3) modifying the information used and timing for release of the market report; and (4) clarifying the authority of the market analyst, formula arbitrator, and other parties involved in the administration of the arbitration system. The forthcoming proposed rule would implement the Council's recommendation under Amendment 30.

Public comments are being solicited on proposed Amendment 30 through the end of the comment period (see **DATES**). NMFS intends to publish a proposed rule in the **Federal Register** for public comment that would implement Amendment 30, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the close of the comment period on Amendment 30 to be considered in the approval/disapproval decision on Amendment 30. All comments received by the end of the comment period on Amendment 30, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 30. Comments received after the end of the public comment period for Amendment 30, even if received within the comment period for the proposed rule, will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: July 20, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18725 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 142
Monday, July 25, 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

Submission for OMB Review; Comment Request

July 19, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Farmers' Market Nutrition Program (FMNP) Forms and Regulations.

OMB Control Number: 0584–0447.

Summary of Collection: The Women, Infants, and Children (WIC) Farmers' Market Nutrition Program (FMNP) is authorized by Public Law 108–265, enacted on June 30, 2004, which amends Section 17(m) of the Child Nutrition Act (42 U.S.C. 1786 (m)). The purpose of the FMNP is to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets, and roadside stands at the option of the State; to expand the awareness and use of farmers' markets; and, to increase sales at such markets. The Food and Nutrition Service (FNS) will collect information from each state that receives a grant under the FMNP program in conjunction with the preparation of annual financial and recipient reports.

Need and Use of the Information: FNS will collect information from the state agency administering the FMNP to develop an annual financial report on the number and type of recipients served by both Federal and non-Federal benefits under the program. The information is necessary for reporting to Congress and for program planning purposes.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit.

Number of Respondents: 7,992.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 23,917.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program Repayment Demand and Program Disqualification.

OMB Control Number: 0584–0492.

Summary of Collection: Section 13(b) of the Food Stamp Act of 1977 requires that State agencies pursue collection action against households that have been over-issued benefits. To initiate collection action, State agencies must provide an affected household with written notification informing the over-issued household of the claim and demanding repayment.

Need and Use of the Information: State agency personnel will collect the information from individuals collecting food stamp benefits. The State agencies must maintain all records associated with this collection for a period of three years so that FNS can review documentation during compliance reviews and other audits. Without the information, FNS would not be able to correct accidental or fraudulent overpayment errors in the Food Stamp Program.

Description of Respondents: State, Local, and Tribal Government; Individuals or households.

Number of Respondents: 687,975.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 166,347.

Food and Nutrition Service

Title: WIC Breastfeeding Peer Counseling Study.

OMB Control Number: 0584–0548.

Summary of Collection: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) was designed to improve the health of nutritionally at-risk, low-income pregnant, breastfeeding, and postpartum women, infants, and children up to five years of age. The program provides supplemental foods that are rich in nutrients known to be lacking in the target population; health and social service referrals; and nutrition education, including information about breastfeeding. Current recommendations of the American Academy of Pediatrics, the American Dietetic Association, the World Health Organization, and the U.S. government's Healthy People 2010 goals call for increases in the proportion of U.S. mothers who breastfeed their babies. WIC encourages breastfeeding as the best source of infant nutrition, and is working to meet the 2010 goals and improve the breastfeeding rates of WIC women relative to non-WIC participants.

Need and Use of the Information: The Food and Nutrition Service (FNS) will use an on-line survey to collect data from 86 State WIC agencies receiving FNS peer counseling grants on the implementation of the *Loving Support* peer counseling program. Results of the study will be used to: (1) Capture and disseminate information on implementing peer counseling programs

using the *Loving Support* model, including lessons learned and successful approaches used by State agencies; (2) assess the additional technical and training needs of State agencies; and (3) provide information to FNS and other Stakeholders on how State agencies are using the peer counseling funding. Without this effort, FNS will not have the comprehensive, systematic description of the implementation of the *Loving Support* peer counseling program required to inform the future program decisions including expenditures of peer counseling funds.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 1,896.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 2,323.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–18719 Filed 7–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 19, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Food Safety and Inspection Service

Title: Application for Inspection, Accreditation of Laboratories, and Exemptions.

OMB Control Number: 0583–0082.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are wholesome, not adulterated, and properly labeled and packaged. FSIS requires meat, poultry, and import establishments to apply for a grant of inspection before they can receive Federal inspection. FSIS requires FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records. FSIS will collect information using several FSIS forms.

Need and Use of the Information: FSIS will collect information to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories accord with FSIS regulations. In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from FSIS's inspection do not commingle inspected and non-inspected meat and poultry products, and to ensure that retail firms qualifying for a retail store exemption and who have violated the provision of the exemption are no longer in violation.

Description of Respondents: Business or other for-profit.

Number of Respondents: 27,743.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 113,873.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–18720 Filed 7–22–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 19, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Highly Pathogenic Avian Influenza, All Subtypes, and Exotic Newcastle Diseases; Additional Restrictions.

OMB Control Number: 0579–0367.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict or export of any animal or related material if necessary to prevent the spread of any livestock or poultry pest or disease. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. The Animal and Plant Health Inspection Service (APHIS), through its Veterinary Services (VS) program, carries out this disease prevention mission. APHIS is clarifying its restrictions on the importation of bird and poultry products from regions where HPAI subtype H5N1 is considered to exist and is adding prohibitions or restrictions on the importation of bird and poultry products from regions where other subtypes of HPAI are considered to exist.

Need and Use of the Information: APHIS will collect the information using the following: (1) Application to Import Controlled Materials or Transport Organisms and Vectors (VS 16–3); (2) Agreement for Handling Restricted Imports of Animal Byproducts and Controlled Materials (VS 16–26); (3) Report of Entry, Shipment of Restricted Imported Animal Products and Animal By Products, and Other Materials (VS 16–78); (4) Application of Seals to Shipping Container; (5) Recordkeeping by Processing Establishments; and (6) Cooperative Service Agreements. Failing to collect this information would make it impossible for APHIS to establish an effective line of defense against introduction of exotic Newcastle disease and HPAI.

Description of Respondents: Business or other for-profits; Not for-profit institutions; Individual or households; Federal Government.

Number of Respondents: 416.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 358.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–18721 Filed 7–22–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Homeowner Risk Reduction Behaviors Concerning Wildfire Risks and Climate Change Impacts

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new, one-time information collection, Homeowner Risk Reduction Behaviors Concerning Wildfire Risks and Climate Change Impacts. The information will be collected from homeowner groups, such as homeowners associations, that have been affected by wildfires.

The information collected will focus on homeowners who live in the wildland-urban interface and were affected by major wildfires in U.S. Department of Agriculture, Forest Service, Region 3. The information provided by this study will allow Forest Service land managers to better understand which risk reduction behaviors homeowners choose to undertake, as well as ones they choose not to undertake, and factors that influence these choices, particularly factors related to climate change impacts. This information will assist the Forest Service in their risk communication efforts with ''at risk'' communities and individuals.

DATES: Comments must be received in writing on or before September 23, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Carol Raish, Rocky Mountain Research Station, Forest Service, USDA, 333 Broadway, SE., Suite 115, Albuquerque, NM 87102.

Comments also may be submitted via facsimile to 505–724–3688 or by e-mail to *craish@fs.fed.us.*

The public may inspect comments received at the Rocky Mountain Research Station, Forest Service, USDA, 333 Broadway, SE., Albuquerque, NM, during normal business hours. Visitors are encouraged to call ahead to 505–724–3666 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Carol Raish, Rocky Mountain Research Station, at 505–724–3666. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Understanding the Threats of Wildfire & Climate Change: Risk Mitigation Behaviors of Homeowners.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: Over the past 20 to 30 years, the population living in areas that are threatened by wildfire has increased significantly. As more individuals move to these areas, it has become increasingly important to understand how they perceive the risks they face living in these new landscapes. Much work has been done in the area of communicating the risks of wildfire to homeowners in these fire prone environments. However, only recently has there been a commitment to better understand the link between wildfire events, the associated risk, and climate change. The objective of this study is to help decisionmakers better understand the preferences of the homeowners in high risk areas to deal with threats that are posed from wildfire as these risks are enhanced due to the effects of climate change. Gaining an improved understanding of the homeowners' decisionmaking process based on these linkages will facilitate the design of more effective risk mitigation projects and improved communication strategies among stakeholders.

Homeowners, located in the wildland-urban interface in areas that were affected by wildfires, will be asked to complete a one-time survey. The homeowners will be asked to voluntarily participate is this survey. The survey will be mailed to homeowners by Integrated Resource Solutions in Laguna Niguel, CA, operating under a Research Joint Venture with the Forest Service Rocky Mountain Research Station in Albuquerque, NM.

The type of information collection will include: (1) Risk perceptions regarding wildfire, (2) risk reduction behaviors associated with wildfire, (3) sources of information regarding wildfires and wildfire risk reduction, (4) attitudes and knowledge of climate change and its impact on wildfire risks, and (5) socio-economic information.

The data collected will be analyzed by Forest Service researchers at the Rocky Mountain Research Station and the following cooperators: Drs. Ingrid and Wade Martin of California State University of Long Beach, Long Beach, California. The results will be made available to Forest Service land

managers, the respondents, and other interested parties.

This information will enhance the ability of Forest Service land managers on national forests to communicate and understand the public and their preferences regarding the management of wildfire risk. Without this type of information, Forest Service land managers and the public will continue to interact on the issues of wildfire risk without a broad-based understanding of the factors that lessen wildfire risk; factors that are important to homeowners.

Estimate of One Time Burden: 30 minutes.

Type of Respondents: Homeowners located in the wildland-urban interface in the western United States.

Estimated One Time Number of Respondents: 500.

Estimated One Time Number of Responses per Respondent: 1.

Estimated Total One Time Burden on Respondents: 250 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 18, 2011.

Jimmy L. Reaves,

Deputy Chief, Research and Development.

[FR Doc. 2011–18629 Filed 7–22–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will be meeting in Prather, California, August 17, 2011 and August 31, 2011. The purpose of the August 17th meeting will be to receive new project proposals for the next funding cycle. The committee will vote on proposed projects during the August 31st meeting.

DATES: The meetings will be held from 6 to 8:30 p.m.

ADDRESSES: The meetings will be held at the High Sierra Ranger District, 29688 Auberry Rd., Prather, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Agenda items to be covered include: (1) Accept new project proposals and (2) Vote on proposed projects.

Dated: July 12, 2011.

Ray Porter,

District Ranger.

[FR Doc. 2011–18213 Filed 7–22–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The West Virginia Resource Advisory Committee will meet in Elkins, West Virginia. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is for the committee to consider new project proposals.

DATES: The meetings will be held on August 25, and September 20, 2011, and will all begin at 1 p.m.

ADDRESSES: The meetings will be held at the Monongahela National Forest Supervisor's Office, 200 Sycamore Street, Elkins, WV 26241. Written comments should be sent to Kate Goodrich-Arling at the same address. Comments may also be sent via e-mail to *kgoodricharling@fs.fed.us,* or via facsimile to 304–637–0582.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: Kate Goodrich-Arling, RAC coordinator, USDA, Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241; (304) 636–1800; e-mail *kgoodricharling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. The following business will be conducted: (1) Review and approval or amendment of notes from previous meeting (2) Consider new project proposals; and (3) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meetings.

July 18, 2011.

Clyde N. Thompson,

Designated Federal Officer.

[FR Doc. 2011–18761 Filed 7–22–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Rio Grande Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Upper Rio Grande Resource Advisory Committee will meet in Monte Vista, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review and recommend project proposals to be funded with Title II money.

DATES: The meeting will be held on August 15, 2011 and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the South Fork Community Building, 0254 Highway 149, South Fork, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via e-mail to *mblakeman@fs.fed.us,* or via facsimile to 719–852–6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Mike Blakeman, RAC Coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719–852–6212; E-mail *mblakeman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Review status of approved projects; (3) Review, evaluate and recommend project proposals to be funded with Title II money; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: July 18, 2011.

Dan S. Dallas,

Forest Supervisor.

[FR Doc. 2011–18723 Filed 7–22–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

De Soto Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The De Soto Resource Advisory Committee will meet in New Augusta, MS. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to select projects that would enhance forest ecosystems or restore and improve land health and water quality on the De Soto National Forest in Wayne and Perry counties.

DATES: The meeting will be held on August 4, 2011, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Perry County Board of Supervisors Building, 101 Main Street, New Augusta, MS 39462. Written comments may be submitted as described under Supplementary Information.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at De Soto Ranger District, 654 West Frontage Road, Wiggins, MS 39577. Visitors are encouraged to call ahead to 601–528–6160 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Edward Hunter, RAC coordinator, USDA, De Soto Ranger District, 654 West Frontage Road, Wiggins, MS 39577; (601) 528–6160; E-mail *ehunter@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome; (2) Review and approval of the minutes from the last meeting; (3) Presentation, Consideration, and Approval of County project proposals; (4) Set next meeting date; and (5) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Individuals wishing to make an oral statement should request in writing by August 2, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to De Soto Ranger District, 654 West Frontage Road, Wiggins, MS 39577, or by e-mail to *ehunter@fs.fed.us,* or via facsimile to 601–528–6193.

Dated: July 5, 2011.

Ronald A Smith,

Designated Federal Official.

[FR Doc. 2011–18641 Filed 7–22–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of the Secretary, Office of Civil Rights.

Title: Reporting Process for Complaint of Employment Discrimination Used by Permanent Employees and Applicants for Employment at DOC.

OMB Control Number: 0690–0015.

Form Number(s): CD–498.

Type of Request: Regular submission (revision of a currently approved information collection).

Burden Hours: 200.

Number of Respondents: 400.

Average Hours per Response: 30 minutes.

Needs and Use: Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1614.106 require that a person alleging discriminatory treatment by a Federal agency, based on race, color, religion, sex, national origin, age, disability, and/or reprisal for participation in equal employment opportunity (EEO) activity, must submit a signed statement that is sufficiently precise to identify the general actions or practices that form the basis of the complaint. This information collection involves the complaint process which will allow the Office of Civil Rights to gather reliable data on the type of complaints filed, and to make the determination of whether a complaint meets all procedural and jurisdictional requirements for acceptance.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via e-mail 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) 395–7258 or via e-mail at *Nicholas_A._Fraser@omb.eop.gov*.

Dated: July 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18672 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Implantation and Recovery of Archival Tags.

OMB Control Number: 0648–0338.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 35.

Average Hours per Response: Tag recovery information, 30 minutes; exempted fishing (scientific research) permit application and annual report, 40 minutes; interim reports, 1 hour.

Burden Hours: 47.

Needs and Uses: This request is for an extension of a currently approved information collection. The National Oceanic and Atmospheric Administration (NOAA) allows scientists to implant archival tags in, or affix archival tags to, selected Atlantic Highly Migratory Species (tunas, sharks, swordfish, and billfish). Archival tags collect location, temperature, and water depth data that is useful for scientists researching the movements and behavior of individual fish. It is often necessary to retrieve the tags in order to obtain the collected data; therefore, persons catching tagged fish are exempted from other normally applicable regulations (*i.e.,* immediate release of the fish, minimum size, prohibited species, retention limits). These participants must notify NOAA, return the archival tag or make it available to NOAA personnel, and provide information about the location and method of capture if they harvest a fish that has an archival tag. The information obtained is used by NOAA in the formation of international and domestic fisheries policy and regulations.

Scientists outside of NOAA who affix or implant archival tags must obtain prior authorization from NOAA and submit subsequent reports about the tagging of fish. NOAA needs that information to evaluate the effectiveness of archival tag programs, to assess the likely impact of regulatory allowances for tag recovery, and to ensure that the research does not produce excessive mortality.

Affected Public: Individuals or households; not-for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18673 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Amended Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 21, 2011, the Department of Commerce (the ''Department'') published its final results of review covering the period November 1, 2008, through October 31, 2009. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review,* 76 FR 36089 (June 21, 2011) (''*Final Results*''). Hyundai HYSCO alleged that the Department made a ministerial error in those *Final Results.* Based on our analysis of the allegation, we have made changes to the weighted-average dumping margin assigned to Hyundai HYSCO.

DATES: *Effective Date:* July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Joshua Morris or Matthew Jordan, 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) 482–1779 or (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2011, Hyundai HYSCO, a producer/exporter not selected for individual examination in this review, alleged that the Department made a ministerial error in the cash deposit rate assigned to the company. No rebuttal comments were received.

Final Determination of No Shipments

In the *Preliminary Results,* the Department preliminarily concluded that Hyundai HYSCO had no knowledge that entries ascribed to it were destined for or entered into the United States during the period of review. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 77838 (December 14, 2010) (''*Preliminary Results*''). We also noted that a dumping margin had been calculated for Hyundai HYSCO in a prior segment of this proceeding. In the *Final Results,* we failed to address these preliminary conclusions and, instead, assigned to Hyundai HYSCO the cash deposit rate for other companies not selected for individual examination.

We are now amending the *Final Results* to reflect the Department's determination that Hyundai HYSCO had no reviewable U.S. sales. *See* Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated July 19, 2011, RE: ''Ministerial Error for Final Results of Review.''

The Department no longer rescinds reviews of companies with no entries. Instead, we complete the review and issue appropriate instructions to U.S. Customs and Border Protection (''CBP'') based on the final results of the review (*see, e.g., Magnesium Metal From the*

Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989 (September 17, 2010)). Specifically, when the company has an individual cash deposit rate from the most recent segment of the proceeding in which the company had shipments and sales, we do not assign that company a new cash deposit rate. Additionally, when the company had no entries, we instruct CBP to liquidate any existing entries of merchandise produced by the company and exported by other parties at the all-others rate.

Amended Margins for the Final Results of Review

We continue to determine that a weighted-average dumping margin exists for the three mandatory respondents, SeAH Steel Corporation (''SeAH''), Husteel Co., Ltd. (''Husteel''), and Nexteel Co., Ltd. (''Nexteel''), for the period November 1, 2008, through October 31, 2009. Respondents other than mandatory respondents and Hyundai HYSCO continue to receive the weighted-average of the margins calculated for SeAH, Husteel, and Nexteel.

Manufacturer/exporter	Weighted-average margin percent
SeAH Steel Corporation	4.99
Husteel Co., Ltd	2.25
Nexteel Co., Ltd	12.90
Hyundai HYSCO	*
Kumkang Industrial Co., Ltd	8.17
A–JU Besteel Co., Ltd	8.17

* No entries or sales subject to this review. The firm has an individual dumping margin from a previous segment of the proceeding in which the firm had entries and sales.

Cash Deposit Requirements for Hyundai HYSCO

The cash deposit rate for Hyundai HYSCO will be revised to reflect the rate it was assigned in the most recent review in which it participated and had sales and entries of subject merchandise. This cash deposit requirement will be in effect until further notice. This cash deposit requirement will be effective for all shipments of subject merchandise produced by Hyundai HYSCO and entered or withdrawn from warehouse for consumption on or after the publication of the *Final Results,* as provided for by section 751(a)(2)(C) of the Act.

Assessment Rate for Hyundai HYSCO

The Department will issue appropriate assessment instructions for Hyundai HYSCO directly to CBP 15 days after the date of publication of these amended final results of review. As explained above, we will instruct CBP to liquidate any entries at the all-others rate established in the less-than-fair-value (''LTFV'') investigation if there is no assessment rate for the intermediate companies involved in the transaction. *See Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe From the Republic of Korea,* 57 FR 42942, 42945 (September 17, 1992); *see also Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Notification to Importers

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.

Notification to Interested Parties

This notice also serves as a 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 return/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.

These amended final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–18713 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2011, the Department of Commerce (the Department) published in the **Federal Register** the initiation a new shipper review of the antidumping duty order on honey from Argentina, covering the period of December 1, 2009, through November 30, 2010, and a single exporter of Argentine honey, Villamora S.A. (Villamora). *See Honey from Argentina: Notice of Initiation of Antidumping Duty New Shipper Review*, 76 FR 5332 (January 31, 2011). The current deadline for the preliminary results of this review is July 24, 2011.

Extension of Time Limits for Preliminary Results of Review

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1), requires the Department to complete the preliminary results of a new shipper review of an antidumping duty order within 180 days after the date on which the review is initiated. However, the Department may extend the deadline for completion of the preliminary results to 300 days if it determines the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

The Department finds that this new shipper review is extraordinarily complicated and, therefore, it requires additional time to complete the preliminary results. Specifically, the Department requires additional time to analyze certain data and information regarding the Argentine honey market and the nature of Villamora's relationship with affiliated parties. Accordingly, the Department is

extending the time limit for completion of the preliminary results of this new shipper review and therefore, will complete these preliminary results no later than August 23, 2011. We intend to issue the final results no later than 90 days after publication of the preliminary results.

This extension is issued and published in accordance with section 751(a)(2)(B)(iv) and 19 CFR 351.214(i)(2).

Dated: July 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–18716 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fisheries Finance Program Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 23, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brian C. Summers at (301) 427–8783 or *Brian.Summers@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA operates a direct loan program to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture operations, and individual fishing quotas. Application information is required to determine eligibility pursuant to 50 CFR part 253 and to determine the type and amount of assistance requested by the applicant. An annual financial statement is required from the recipients to monitor the financial status of the loan.

II. Method of Collection

Paper applications.

III. Data

OMB Control Number: 0648–0012.

Form Number: 88–1.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 1,735.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 13,880.

Estimated Total Annual Cost to Public: $8,050.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18674 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA583

Endangered Species; File No. 16146

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Kristen Hart, U.S. Geological Survey, Southeast Ecological Science Center, Davie Field Office, Davie, FL, has applied in due form for a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 24, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16146 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the

authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a five-year permit to study green, hawksbill, and loggerhead sea turtles at Buck Island Reef National Monument, U.S. Virgin Islands. The purposes of the research are to determine species-specific habitat-use patterns over time, increase understanding of genetic stock structure, and estimate vital rates and local population abundance. The applicant would capture 160 green turtles each year. All would be subject to counts, epibiota removal, lavage, temporary carapace marking, flipper and passive integrated transponder tagging, measure, photograph, (potential) recapture, blood sampling, fecal sampling, tissue biopsy, and weighing. Of the 160, 20 also would be tagged with satellite tags and data loggers (epoxy attachments) and acoustic transmitters (epoxy or drill carapace and attach with wire). All 20 would not necessarily be subject to all three tag types, but no more than 20 would have any type of tag attached. Hawksbill takes would be for the same activities, but a total of 180 would be captured annually, with 30 of those subject to a combination of tags. Fifteen loggerheads would be captured per year, and all would be subject to all of the activities.

Dated: July 19, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–18727 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

National Climate Assessment and Development Advisory Committee (NCADAC)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The National Climate Assessment and Development Advisory Committee (NCADAC) was established by the Secretary of Commerce under the authority of the Global Change Research Act of 1990 to synthesize and summarize the science and information pertaining to current and future impacts of climate.

Time and Date: The meeting will be held August 16 and 17, 2011, from 9 a.m to 6 p.m. and August 18, 2011, from 9 a.m. to 3 p.m. These times and the agenda topics described below are subject to change. Please refer to the web page *http://www.globalchange.gov* for the most up-to-date meeting agenda.

Place: The meeting will be held at the EPA Offices at the US EPA Potomac Yard Conference Facility, 1st Floor conference room in the Potomac Yard ONE or SOUTH building. The address is 2777 Crystal Drive, Arlington, VA 22202. Please check the Web site *http://www.globalchange.gov* for confirmation of the venue and for directions.

Status: Seating will be available on a first come, first serve basis. Members of the public must RSVP in order to attend all or a portion of the meeting by contacting the NCADAC DFO (*Cynthia.Decker@noaa.gov*) by August 9, 2011. The meeting will be open to public participation with a 30 minute public comment period on August 17 at 5:30 p.m. (check Web site to confirm time). The NCADAC expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Individuals or groups planning to make a verbal presentation should contact the NCADAC DFO (*Cynthia.Decker@noaa.gov*) by August 9, 2011 to schedule their presentation. Written comments should be received in the NCADAC DFO's Office by August 9, 2011 to provide sufficient time for NCADAC review. Written comments received by the NCADAC DFO after August 9, 2011 will be distributed to the NCADAC, but may not be reviewed prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA OAR, R/SAB, 1315 East-West Highway, Silver Spring, Maryland 20910. (*Phone:* 301–734–1156, *Fax:* 301–713–1459, *E-mail: Cynthia.Decker@noaa.gov;* or visit the NCADAC Web site at *http://www.globalchange.gov.*

Dated: July 19, 2011.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–18653 Filed 7–22–11; 8:45 am]

BILLING CODE 3510–KD–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 76, No. 140, Thursday July 21, 2011, page 43659.

ANNOUNCED TIME AND DATE OF OPEN MEETING: 10–11 a.m., Wednesday July 27, 2011.

CHANGES TO OPEN MEETING: TIME CHANGE to 10 a.m.–12 p.m. REVISED AGENDA: Matters to be Considered: (1) Decisional Matters: (a) Phthalates notice of requirements; (b) Phthalates enforcement policy; (c) 100ppm lead enforcement statement; (2) Briefing Matter: Virginia Graeme Baker Pool and Spa Safety Act; Incorporation by reference of ANSI successor standard.

ANNOUNCED TIME AND DATE OF CLOSED MEETING: 11 a.m.–12 p.m., Wednesday July 27, 2011.

CHANGES TO CLOSED MEETING: TIME CHANGE to 2–3p.m.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: July 21, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–18808 Filed 7–21–11; 11:15 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled the Martin Luther King, Jr. Day of Service application Instructions to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Rochelle Barry at (404) 965–2102. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 833–3722 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, *Attn:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 12, 2011. This comment period ended July 18, 2011. No public comments were received from this Notice.

Description: The Corporation is seeking approval of revised Martin Luther King, Jr. Day of Service Application Instructions using the Corporation's Electronic Application System, eGrants.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Martin Luther King, Jr. Day of Service Application Instructions.

OMB Number: 3045–0110.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for National and Community Service for funding of Martin Luther King, Jr. Day of Service Grants.

Total Respondents: 50.

Frequency: Annual.

Average Time per Response: Ten (10) hours.

Estimated Total Burden Hours: 500.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 18, 2011.

Idara Nickelson,

Acting Chief of Program Operations.

[FR Doc. 2011–18748 Filed 7–22–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Request for Public Comments on the Definition of ''Produced'' in Defense Federal Acquisition Regulation Supplement (DFARS) 225.7003, Restrictions on Acquisition of Specialty Metals

AGENCY: Department of Defense (DoD).

ACTION: Request for public comments.

SUMMARY: The Department of Defense is seeking public comments on the definition of ''produced'' in Defense Federal Acquisition Regulation Supplement (DFARS) 225.7003, Restrictions on acquisition of specialty metals.

DATES: Submit written comments to the address shown below on or before September 8, 2011. Comments received will be considered by DoD in the formation of a recommendation to the Secretary of Defense if a revision to the definition is necessary and appropriate.

ADDRESSES: Submit comments to: Director, Defense Procurement and Acquisition Policy, 3060 Defense Pentagon, Washington, DC 20301–3060, or e-mail to *patricia.foley@osd.mil.*

FOR FURTHER INFORMATION CONTACT: Patricia Foley, telephone 703–693–1145.

SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) is conducting a review of DFARS 225.7003, Restrictions on acquisition of specialty metals, to determine whether it complies with the requirements of section 2533b of title 10, United States Code, as required by section 823 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). DoD is seeking public comments on the definition of ''produced'' in the course of its review. Public comments from industry and industry associations should provide sales and market share data regarding the proportion of specialty metals acquired for DoD major weapons systems. DoD will use these submissions as part of its internal deliberations. Any amendments to the acquisition regulations resulting from these deliberations will be subject to approval by the Defense Acquisition Regulations Council.

Background: Section 842 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) added new provisions at 10 U.S.C. 2533b to address requirements for the purchase of specialty metals from domestic sources. 10 U.S.C. 2533b restricts DoD's acquisition of end items containing specialty metals to those ''melted or produced'' in the United States unless the acquisition meets one of the exceptions in the law. The statute specifically included the phrase ''melted or produced,'' allowing that melting was not the only acceptable process for creation of domestic specialty metals.

DoD published a proposed rule under DFARS Case 2008–D003, Restriction on Acquisition of Specialty Metals, at 73 FR 42300 on July 21, 2008. DoD considered public comments submitted in response to the proposed rule in the formation of a final rule. DoD published a final rule at 74 FR 37626 on July 29, 2009. The Federal Register notice summarized the concerns expressed in the public comments submitted in response to the proposed rule and the reasoning used in drafting the definition.

DoD defined the term ''produce'' in the final DFARS rule to incorporate technological progress in the industry that resulted in the production of some specialty metals without requiring melting. The DFARS defines ''produce'' for use in the specialty metals clause as ''the application of forces or processes to a specialty metal to create the desired physical properties through quenching or tempering of steel plate, gas atomization or sputtering of titanium, or final consolidation of non-melt derived titanium powder or titanium alloy powder.''

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–18383 Filed 7–22–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense, Office of the Secretary.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, August 9, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: 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.

Dated: July 20, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–18714 Filed 7–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense, Office of the Secretary.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, August 23, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: 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.

Dated: July 20, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–18715 Filed 7–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant a Partially Exclusive Patent License; TransMembrane Bioscience, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to TranMembrane Bioscience, Inc., a revocable, nonassignable, partially exclusive license to practice worldwide the Government owned inventions described in U.S. Patent No. 7,329,503: Recombinant antigens for the detection of Coxiella burnetii; U.S. Patent No. 7,824,875: Recombinant antigens for the detection of Coxiella burnetii; and U.S. Patent No. 7,824,909: Recombinant antigens for the detection of Coxiella burnetii in the field of ''Development of human and veterinary diagnostic assays for the detection of prior exposure to Coxiella burnetii infection by antibody-based assays using recombinant, immunodominant C. burnetii polypeptides and the development of veterinary vaccines to prevent C. burnetii infections.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 9, 2011.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Roxanne Charles, Office of Legal and Technology Services, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone 301–319–9846.

Dated: July 19, 2011.

L. M. Senay,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–18765 Filed 7–22–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Charter Schools Program Grants to Non-State Educational Agencies for Planning, Program Design, and Initial Implementation and for Dissemination

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Charter Schools Program (CSP) Grants to Non-State Educational Agencies (Non-SEA) for Planning, Program Design, and Initial Implementation and for Dissemination. Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.282B and 84.282C.

DATES:

Applications Available: July 25, 2011.

Deadline for Transmittal of Applications: August 24, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. Non-SEA eligible applicants in States in which the SEA

does not have an approved application under the CSP may receive direct grants from the Secretary for planning, program design, and initial implementation of charter schools, and to carry out dissemination activities. States with an approved application are Arizona, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Georgia, Idaho, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Wisconsin.

Non-SEA eligible applicants that propose to use grant funds for planning, program design, and initial implementation of charter schools must apply under CFDA number 84.282B. Non-SEA eligible applicants that request funds for dissemination activities must apply under CFDA number 84.282C.

Priorities: This notice includes three competitive preference priorities and one invitational priority. The competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Competitive Preference Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional six points to an application depending on how well the application meets Competitive Preference Priority 1, up to an additional two points to an application depending on how well the application meets Competitive Preference Priority 2, and up to an additional two points to an application depending on how well the application meets Competitive Preference Priority 3. The maximum number of points an application can receive under these priorities is 10 points.

Note: In order to be eligible to receive preference under these competitive preference priorities, the applicant should identify the priority or priorities that it believes it meets and provide documentation supporting its claims.

These priorities are:

Competitive Preference Priority 1—Improving Achievement and High School Graduation Rates (up to 6 points)

This priority is for projects that are designed to address one or more of the following priority areas:

(a) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice);

(b) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students with disabilities;

(c) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for English learners;

(d) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for high-need students (as defined in this notice);

(e) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates in high-poverty schools (as defined in this notice);

(f) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for all students in an inclusive manner that ensures that the specific needs of high-need students (as defined in this notice) participating in the project are addressed.

Note: Applicants will receive one point for each priority area they address satisfactorily under this priority.

Competitive Preference Priority 2—Promoting Diversity (up to 2 points)

This priority is for projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation.

Note: An applicant addressing Priority 2—Promoting Diversity is invited to discuss how the proposed design of its project would help bring together students from different backgrounds, including students from different racial and ethnic backgrounds, to attain the benefits that flow from a diverse student body. We encourage each applicant that addresses this priority to discuss in its application how it would ensure that its approach to promoting diversity is permissible under current law.

Competitive Preference Priority 3—Improving Productivity (up to 2 points)

This priority is for projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Invitational Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Turning Around Persistently Low-Performing Schools.

The Secretary is particularly interested in projects that support turning around persistently low-performing schools. To meet this invitational priority, the proposed project should engage in one or both of the following types of activities: (1) The creation of a new charter school in the vicinity of one or more public schools closed as a consequence of a local educational agency (LEA) implementing a restructuring plan under section 1116(b)(8) of the ESEA, provided that this is done in coordination with the LEA; or (2) the creation of a new charter school under the restart model of intervention supported under the Department's School Improvement Grants program. (See Final Requirements for School Improvement Grants as Amended October 28, 2010 at *http://www2.ed.gov/programs/sif/2010-27313.pdf.*) Under this model, an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process.

Definitions

The following definitions are taken from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and apply to this competition.

1. *Graduation rate* means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

2. *High-need children and high-need students* means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who

are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrants, or who have disabilities.

3. *High-poverty school* means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

4. *Open Educational Resources (OER)* means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

5. *Rural local educational agency* means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *https://www2.ed.gov/nclb/freedom/local/reap.html.*

Requirements: Applicants approved for funding under this competition must attend an in-person, two-day meeting for project directors during each year of the project. Applicants are encouraged to include the cost of attending this meeting in their proposed budgets.

Program Authority: 20 U.S.C. 7221–7221i; Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117; Department of Defense and Full-Year Continuing Appropriations Act, 2011, Division B, Title VIII, Public Law 112–10.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply only to institutions of higher education.

Note: The regulations in 34 CFR part 99 apply only to educational agencies or institutions.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The FY 2011 appropriation for the CSP is $255,518,938, of which we intend to use an estimated $4,201,705 for this competition for non-SEA eligible applicants.

Estimated Range of Awards: $140,000–$200,000 per year for up to three years.

Estimated Average Size of Awards: $175,000 per year.

Estimated Number of Awards: 22–26.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months for planning, program design, and initial implementation grants under CFDA number 84.282B. Up to 24 months for dissemination grants under CFDA number 84.282C.

Note: For planning, program design, and initial implementation grants awarded by the Secretary to non-SEA eligible applicants under CFDA number 84.282B, no more than 18 months may be used for planning and program design and no more than two years may be used for the initial implementation of a charter school.

III. Eligibility Information

1. *Eligible Applicants:*

(a) *Planning, Program Design, and Initial Implementation grants (CFDA number 84.282B):* A non-SEA eligible applicant that serves a State with a State statute specifically authorizing the establishment of charter schools and in which the SEA elects not to participate in the CSP or does not have an application approved under the CSP. (See the *Note* below for a definition of ''eligible applicant.'')

(b) *Dissemination grants (CFDA number 84.282C):* Charter schools, as defined in section 5210(1) of the ESEA (20 U.S.C. 7221i), in States in which the SEA elects not to participate in the CSP or does not have an application approved under the CSP.

Note: Consistent with section 5204(f)(6) of the ESEA (20 U.S.C. 7221c(f)(6)), a charter school may apply for funds to carry out dissemination activities, whether or not the charter school previously applied for or received funds under the CSP for planning, program design, or implementation, if the charter school has been in operation for at least three consecutive years and has demonstrated overall success, including—

(1) Substantial progress in improving student academic achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

Note: The term *eligible applicant* is defined in section 5210(3) of the ESEA (20 U.S.C. 7221i(3))as a developer that has (a) Applied to an authorized public chartering authority to operate a charter school; and (b) provided adequate and timely notice to that authority under section 5203(d)(3) of the ESEA (20 U.S.C. 7221b(d)(3)). A *developer* is defined in section 5210(2) of the ESEA as an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out (see section 5210(2) of the ESEA (20 U.S.C. 7221i(2))). These competitions (CFDA numbers 84.282B and 84.282C) are limited to *eligible applicants* in States in which the SEA does not have an approved application under the CSP (or will not have an approved application as of October 1, 2011). The following States currently have an approved application under the CSP: Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Wisconsin.

Non-SEA eligible applicants and charter schools located in States with currently approved CSP applications that are interested in participating in the CSP should contact the SEA for information related to the State's CSP subgrant competition. Further information is available at *http://www2.ed.gov/about/offices/list/oii/csp/funding.html.*

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* LaShawndra Thornton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W257, Washington, DC 20202–5970. Telephone: (202) 453–5617 or by e-mail: *Lashawndra.Thornton@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille,

large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5'' × 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

Applications Available: July 25, 2011.

Deadline for Transmittal of Applications: August 24, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:*

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a grant under this program may use the grant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources. (20 U.S.C. 7221c(f)(3))

Use of Funds for Dissemination Activities. A charter school may use grant funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools. (20 U.S.C. 7221c(f)(6))

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CSP, CFDA Numbers 84.282B and 84.282C, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the CSP at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.282, not 84.282B or 282C).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because——

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: LaShawndra Thornton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W257, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Application Requirements.* An applicant applying for CSP grant funds, under either CFDA number 84.282B or 84.282C, must address the following application requirements, which are based on 20 U.S.C. 7221b(b), 7221c(a), and 7221c(b), as well as the applicable selection criteria in this notice, and may choose to respond to the application requirements in the context of its responses to the selection criteria.

(i) Describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of children to be served, and the curriculum and instructional practices to be used;

(ii) Describe how the charter school will be managed;

(iii) Describe the objectives of the charter school and the methods by which the charter school will determine its progress toward achieving those objectives;

(iv) Describe the administrative relationship between the charter school and the authorized public chartering agency;

(v) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;

(vi) Describe how the authorized public chartering agency will provide for continued operation of the charter school once the Federal grant has expired, if that agency determines that the charter school has met its objectives as described in paragraph (iii);

(vii) If the charter school desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter school, and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school;

(viii) Describe how the grant funds, as appropriate, will be used, including a description of how these funds will be used in conjunction with other Federal programs administered by the Secretary;

(ix) Describe how students in the community will be informed about the charter school and be given an equal opportunity to attend the charter school;

(x) Describe how a charter school that is considered an LEA under State law, or an LEA in which a charter school is located, will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act (IDEA); and

Note: For more information on IDEA, please see *http://idea.ed.gov/explore/view/p/%2Croot%2Cstatute%2CI%2CB%2C613%2C.*

(xi) If the eligible applicant desires to use grant funds for dissemination activities under section 20 U.S.C 7221a (c)(2)(C), describe those activities and how those activities will involve charter schools and other public schools, LEAs, developers, and potential developers.

2. *Selection Criteria:* The selection criteria for this competition are from 20 U.S.C. 7221b; 20 U.S.C. 7221c; 34 CFR 75.210 of EDGAR; the Consolidated Appropriations Act, 2010, Division D, Title III, Pub. L. 111–117; and the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Division B, Title VIII, Public Law 112–10.

The selection criteria for applicants submitting applications under CFDA number 84.282B are listed in paragraph (a) In this section, and the selection criteria for applicants submitting applications under CFDA number 84.282C are listed in paragraph (b) in this section.

(a) *Selection Criteria for Planning, Program Design, and Initial Implementation Grants (CFDA number 84.282B).* The following selection criteria are from section 5204 of the ESEA and 34 CFR 75.210 of EDGAR. The maximum possible score for all of the criteria in this section is 100 points. The maximum possible score for each criterion is indicated in parentheses following the criterion. In evaluating an application for a planning, program design, and implementation grant, the Secretary considers the following criteria:

(i) *Quality of the proposed curriculum and instructional practices (20 U.S.C. 7221c(b)(1)) (25 points).*

Note: The Secretary encourages the applicant to describe the quality of the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used. If the curriculum and instructional practices have been successfully used in other schools operated or managed by the applicant, we encourage the applicant to describe the implementation of such practices and the academic results achieved.

(ii) *The degree of flexibility afforded by the SEA and, if applicable, the LEA to the charter school (20 U.S.C. 7721c(b)(2)) (3 points).*

Note: The Secretary encourages the applicant to include a description of the flexibility afforded under the State's law for establishing an administrative relationship between the charter school and the authorized public chartering agency and for exempting the charter school from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy the charter school will have over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with its State's charter school law.

(iii) *The extent of community support for the application (20 U.S.C. 7221c(b)(3)) (3 points).*

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be informed about the charter school, and how students will be given an equal opportunity to attend the charter school.

(iv) *The quality of the strategy for assessing achievement of the charter school's objectives (20 U.S.C. 7221c(b)(5)) (15 points).*

(v) *Existence of a charter or performance contract between the charter school and its authorized public chartering agency (20 U.S.C. 7221i(1)(L); Consolidated Appropriations Act, 2010, Division D, Title III, Pub. L. 111–117; Department of Defense and Full-Year Continuing Appropriations Act, 2011, Division B, Title VIII, Public Law 112–10) (5 points).* The existence of a charter or performance contract between the charter school and its authorized public chartering agency and the extent to which the charter or performance contract describes how student performance will be measured in the charter school pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(vi) *The extent to which the proposed project encourages parental and community involvement (20 U.S.C. 7221b(b)(3)(E)) (3 points).*

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school.

(vii) *Quality of the personnel (34 CFR 75.210(e)(1), (e)(2), and (e)(3)(ii)) (25 points).* The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(viii) *Quality of the management plan (34 CFR 75.210(g)(1) and (g)(2)(i)) (16 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ix) *The extent to which the proposed project will assist educationally disadvantaged students in meeting State academic content standards and State student academic achievement standards (20 U.S.C. 7221c(a)(1)) (5 points).*

(b) *Selection Criteria for Dissemination Grants (CFDA number 84.282C).* The following selection criteria are from section 5204 of the ESEA and 34 CFR 75.210 of EDGAR. The maximum possible score for all the criteria in this section is 100 points. The maximum possible score for each criterion is indicated in parentheses following the criterion. In evaluating an application for a dissemination grant, the Secretary considers the following criteria:

(i) *The quality of the proposed dissemination activities and the likelihood that those activities will improve student achievement (20 U.S.C. 7221c(b)(7)) (20 points).*

Note: The Secretary encourages the applicant to describe the objectives for the proposed dissemination activities and the methods by which the charter school will determine its progress toward achieving those objectives.

(ii) *Performance contract (20 U.S.C. 7221i(1)(L); Consolidated Appropriations Act, 2010, Division D, Title III, Pub. L. 111–117; Department of Defense and Full-Year Continuing Appropriations Act, 2011, Division B, Title VIII, Public Law 112–10) (5 points).* The existence of a charter or performance contract between the charter school and its authorized public chartering agency and the extent to which the charter or performance contract describes how student performance will be measured in the charter school pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(iii) *Demonstration of success (20 U.S.C. 7221c(f)(6)(A)) (up to 30 points).* The extent to which the school has demonstrated overall success, including—

(1) Substantial progress in improving student achievement (15 points);

(2) High levels of parent satisfaction (5 points); and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school (10 points).

(iv) *Dissemination strategy (34 CFR 75.210(b)(2)(xii)) (15 points).* The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(v) *Quality of the personnel (34 CFR 75.210(e)(1), (e)(2), and (e)(3)(i)) (20 points).* The Secretary considers the

quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the qualifications, including relevant training and experience, of the project director or principal investigator.

(vi) *Quality of the management plan (34 CFR 75.210(g)(1) and (g)(2)(i)) (10 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

4. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

5. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has two performance indicators to measure progress toward this goal: (1) The number of high-quality charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: LaShawndra Thornton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W257, Washington, DC 20202–5970. Telephone: (202) 453–5617 or by e-mail: *Lashawndra.Thornton@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://*

www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 20, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–18740 Filed 7–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (*i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Monday, August 1, 2011 by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov*. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

Date and time: Wednesday, August 10, 2011, beginning at 4 p.m. and ending at approximately 5:30 p.m. (EST).

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington DC 20202–7582, (202) 219–2099.

Individuals who use a telecommunications device for the deaf (TTY) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Opportunity Act of 2008 to include several important areas: access, Title IV modernization, early information and needs assessment and review and analysis of regulations. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference for annual election of officers and to approve its Fiscal Year 2012 work plan.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following e-mail address: *tracy.deanna.jones@ed.gov*. Please include your name, title, affiliation, complete address (including internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Wednesday, August 3, 2011.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www.ed.gov/ACSFA*.

Dated: July 19, 2011.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2011–18677 Filed 7–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI11–12–000]

Gay & Robinson, Inc.; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Declaration of Intention.

b. Docket No: DI11–12–000.

c. Date Filed: July 11, 2011.

d. Applicant: Gay & Robinson, Inc.

e. Name of Project: Olokele River Hydroelectric Project.

f. Location: The proposed Olokele River Hydroelectric Project will be located on Olokele River, near the town of Waimea, Kauai County, Hawaii, at Latitude 22°00′16.92″ N. Longitude 159°37.20″ W.

g. Filed Pursuant to: Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Charles Okamoto, President, Gay & Robinson, Inc., P.O. Box 156, Kaumakani, Hawaii 96747; telephone: (808) 335–3133; Fax: (808) 335–6424; e-mail: *http://www.cokamoto@gayandrobinson.com.*

i. FERC Contact: Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. Deadline for filing comments, protests, and/or motions: August 30, 2011.

All documents should 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 filed with: 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. Please include the docket number (DI11–12–000) on any comments, protests, and/or motions filed.

k. Description of Project: The proposed Olokele River Hydroelectric Project will consist of: (1) Water diverted from the Olekele River into the 20-mile-long Olokele Ditch System; (2) a proposed 100-foot-long, 20-foot-wide forebay; (3) a proposed 42-inch-diameter, 4,175-foot-long ductile iron pipe penstock, which will lead to a proposed 40-foot-long, 40-foot-wide, 25-foot-high prefab steel powerhouse, containing a 6.0-megawatt Pelton turbine; (4) a short tailrace returning water to the Olokele River; (5) a proposed 5-mile-long primary transmission line connecting to a proposed new substation; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (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 filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18699 Filed 7–22–11; 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 exempt wholesale generator filings:

Docket Numbers: EG11–107–000.

Applicants: Trinity Hills Wind Farm LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Trinity Hills Wind Farm LLC.

File Date: 07/15/2011.

Accession Number: 20110715–5056.

Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2498–001.

Applicants: South Carolina Electric & Gas Transmission Co.

Description: South Carolina Electric & Gas Co submits an updated market power analysis supporting their continued authorization to make wholesale electricity sales at market-based rates.

File Date: 07/14/2011.

Accession Number: 20110715–0029.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: ER11–4056–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: LGIA among the NYISO, NYPA and Marble River, LLC to be effective 6/29/2011.

File Date: 07/15/2011.

Accession Number: 20110715–5085.

Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4057–000.

Applicants: Shiloh III Wind Project, LLC.

Description: Shiloh III Wind Project, LLC submits tariff filing per 35.12: Shiloh III Baseline MBR Application Filing to be effective 9/1/2011.

File Date: 07/15/2011.

Accession Number: 20110715–5164.

Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4058–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Amended Reliant IOA to be effective 9/13/2011.

File Date: 07/15/2011.

Accession Number: 20110715–5165.

Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4059–000.

Applicants: Alcoa Power Generating Inc.

Description: Alcoa Power Generating Inc. submits tariff filing per 35.1: APGI–TVA Interconnection Agreement to be effective 7/15/2011.

File Date: 07/15/2011.

Accession Number: 20110715–5166.

Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4060–000.

Applicants: High Sierra Limited.

Description: High Sierra Limited submits tariff filing per 35.12: High Sierra Limited Market-Based Rate Tariff to be effective 7/16/2011.

File Date: 07/15/2011.

Accession Number: 20110715–5167.
Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4061–000.
Applicants: Kern Front Limited.
Description: Kern Front Limited submits tariff filing per 35.12: Kern Front Limited MBR Tariff to be effective 7/16/2011.
File Date: 07/15/2011.
Accession Number: 20110715–5168.
Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4062–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Amended Reliant IOA to be effective 9/13/2011.
File Date: 07/15/2011.
Accession Number: 20110715–5169.
Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4063–000.
Applicants: Double ''C'' Limited.
Description: Double ''C'' Limited submits tariff filing per 35.12: Double ''C'' Limited MBR Tariff to be effective 7/16/2011.
File Date: 07/15/2011.
Accession Number: 20110715–5170.
Comment Date: 5 p.m. Eastern Time on Friday, August 05, 2011.

Docket Numbers: ER11–4064–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Amended Washington Parrish IOA to be effective 9/13/2011.
File Date: 07/15/2011.
Accession Number: 20110715–5171.
Comment Date: 5 p.m. Eastern Time on Friday, August 05, 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 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: July 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18657 Filed 7–22–11; 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 corporate filings:

Docket Numbers: EC11–96–000.
Applicants: Dartmouth Power Associates Limited Partnership, Camden Plant Holding, LLC, Pedricktown Cogeneration Company LP, Elmwood Park Power LLC, Newark Bay Cogeneration Partnership, L.P, York Generation Company LLC, Bayonne Plant Holding, LLC.
Description: Application for the Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Bayonne Plant Holding, LLC.
Filed Date: 07/18/2011.
Accession Number: 20110718–5161.
Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–108–000.
Applicants: High Plains Ranch II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of High Plains Ranch II, LLC.
Filed Date: 07/18/2011.
Accession Number: 20110718–5197.
Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2897–002.
Applicants: Krayn Wind LLC.
Description: Krayn Wind LLC submits Non-material Change in Status Notice.
Filed Date: 07/18/2011.
Accession Number: 20110718–5117.
Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4065–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): PJM Queue No. V4–054; Original Service Agreement No. 2967 to be effective 6/17/2011.
Filed Date: 07/18/2011.
Accession Number: 20110718–5053.
Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4066–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.15: Termination of Harrison Relay Replacement Agreement to be effective 10/5/2011.
Filed Date: 07/18/2011.
Accession Number: 20110718–5090.
Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4067–000.
Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits tariff filing per 35.13(a)(2)(iii): TEP Hourly Firm Filing to be effective 7/19/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5092.

Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4068–000.

Applicants: UNS Electric, Inc.

Description: UNS Electric, Inc. submits tariff filing per 35.13(a)(2)(iii): UNSE Hourly Firm Filing to be effective 7/19/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5093.

Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4069–000.

Applicants: RITELine Illinois, LLC, RITELine Indiana, LLC.

Description: RITELine Illinois, LLC submits tariff filing per 35.1: RITELine Illinois Concurrence to be effective 10/17/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5137.

Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4070–000.

Applicants: RITELine Illinois, LLC, RITELine Indiana, LLC.

Description: RITELine Illinois, LLC submits tariff filing per 35.1: RITELine Indiana FR and Protocols to be effective 10/17/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5138.

Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4071–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2151R1 TPW Petersburg, LLC GIA to be effective 6/16/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5156.

Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4072–000.

Applicants: NV Energy, Inc.

Description: NV Energy, Inc. submits tariff filing per 35: Attachment C—Compliance Filing to be effective 4/1/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5181.

Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Docket Numbers: ER11–4073–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Original Service Agreement Nos. 2962 and 2963 to be effective 6/17/2011.

Filed Date: 07/18/2011.

Accession Number: 20110718–5182.

Comment Date: 5 p.m. Eastern Time on Monday, August 08, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18696 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–54–000]

Buckeye Power, Inc. v. American Transmission Systems, Incorporated; Notice of Complaint

Take notice that on July 18, 2011, pursuant to sections 206 and 306 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), Buckeye Power, Inc. (Buckeye or Complainant) filed a formal complaint against American Transmission Systems, Incorporated (ATSI or Respondent) alleging that ATSI's voltage-differentiated rates for transmission service in the ATSI Zone of PJM Interconnection, L.L.C. (PJM) are unjust, unreasonable, unduly discriminatory, and preferential, and should be replaced with a rolled-in rate reflecting the cost of all ATSI transmission facilities, regardless of voltage.

Buckeye certifies that copies of the complaint were served on ATSI, PJM, and the Public Utilities Commission of Ohio.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 8, 2011.

Dated: July 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18700 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4063–000]

Double ''C'' Limited; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Double ''C'' Limited's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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: July 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18691 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4060–000]

High Sierra Limited; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of High Sierra Limited's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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: July 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18693 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4061–000]

Kern Front Limited; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Kern Front Limited's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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: July 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18692 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4057–000]

Shiloh III Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Shiloh III Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 8, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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: July 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18694 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4055–000]

Copper Mountain Solar 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Copper Mountain Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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: July 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18695 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–49–000]

National Grid Transmission Services Corporation; Bangor Hydro Electric Company; Notice of Petition for Declaratory Order

Take notice that on July 11, 2011, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, National Grid Transmission Services Corporation and Bangor Hydro Electric Company (collectively, NEL Parties) filed a petition for declaratory order to request that the Commission issues a finding that a proposed transaction, between the NEL Parties and an undesignated subsidiary of First Wind Holdings, Inc. (First Wind) is consistent with the Commission's requirements regarding participant-funded transmission lines. The NEL Parties seek a determination that a proposed bilateral transmission services agreement, under which the NEL Parties will sell First Wind up to 1,100 MW of transmission service over a new, participant-funded, high voltage direct current transmission line, the Northeast Energy Link, in order that First Wind may deliver energy to purchasers in New England.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 15, 2011.

Dated: July 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18697 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–47–000]

North Carolina Electric Membership Corporation; Notice of Petition for Partial Waiver

Take notice that on June 30, 2011, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Public Utility Regulatory Policies Act of 1978 (PURPA) Regulations, 18 CFR 292.402, North Carolina Electric Membership Corporation (NCEMC), on behalf of itself and its twenty participating electric distribution cooperative member-owners (Participating Members) [1] filed a petition for partial waiver of certain obligations imposed on NCEMC and Participating Members under sections 292–303(a) and 292.303(b) of the Commission's Regulations implementing section 210 of PURPA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

[1] NCEMC's twenty Participating Member-owners joining in this petition are: Albemarle Electric Membership Corp., Brunswick Electric Membership Corp., Cape Hatteras Electric Cooperative, Carteret-Craven Electric Cooperative, Central Electric Membership Corp., Edgecombe-Martin County Electric Membership Corp., Four County Electric Membership Corp., Halifax Electric Membership Corp., Jones-Onslow Electric Membership Corp., Lumbee River Electric Membership Corp., Pee Dee Electric Membership Corp., Pitt & Greene Electric Membership Corp., Randolph Electric Membership Corp., Roanoke Electric Cooperative, South River Electric Membership Corp., Surry-Yadkin Electric Membership Corp., Tideland Electric Membership Corp., Tri-County Electric Membership Corp., Union Power Cooperative, and Wake Electric Membership Corp.

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 16, 2011.

Dated: July 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18690 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–516–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on July 14, 2011, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP11–516–000, an application pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to abandon in place and by sale to Famcor Oil, Inc. (Famcor), a natural gas producer, a natural gas supply line located in San Jacinto and Liberty Counties, Texas, under Tennessee's blanket certificate issued in Docket No. CP82–413–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Tennessee proposes to abandon by sale to Famcor[2] its supply lateral designated as Line No. 26A–100 and all equipment and appurtenances (the Cold Springs Lateral).[3] The Cold Springs Lateral consists of 12.3 miles of 6-inch diameter pipeline and appurtenances that was placed in service on January 27, 1951. Tennessee states that it does not currently provide any firm transportation services via the Cold Springs Lateral, but it does provide interruptible transportation services to three shippers on the lateral. Tennessee also states that it has received signed consent letters from the three shippers for the abandonment. Tennessee further states that it would cost approximately $13,000,000 to replicate the facilities today.

Any questions concerning this prior notice request may be directed to Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, at (713) 420–5751 or (713) 420–1601 (facsimile) or Juan Eligio, Analyst, Certificates & Regulatory Compliance, at (713) 420–3294 or (713) 420–1605 (facsimile).

This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Dated: July 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18698 Filed 7–22–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 20 FERC ¶ 62,409 (1982).

[2] Neither Tennessee nor Famcor seeks a declaration from the Commission that the Cold Springs lateral facilities will perform a non-jurisdictional function (such as gathering) following abandonment. Famcor assumes any risks associated with any future allegation that these facilities might be jurisdictional to the Commission.

[3] *See Tennessee Gas Pipeline Co.,* 8 FPC 276 (1949).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9443–2]

Environmental Laboratory Advisory Board; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

The Charter for the Environmental Protection Agency's (EPA) Environmental Laboratory Advisory Board (ELAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The purpose of ELAB is to provide advice and recommendations to the Administrator of EPA on issues associated with enhancing EPA's measurement programs and the systems and standards of environmental accreditation.

It is determined that ELAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Lara P. Autry, Senior Advisor, U.S. Environmental Protection Agency, Office of the Science Advisor, 109 T W Alexander Drive (E243–05), Research Triangle Park, NC 27709 or by *e-mail: autry.lara@epa.gov.*

Dated: June 6, 2011.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–18709 Filed 7–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 control number.

DATES: Persons wishing to comment on this information collection should submit comments September 23, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov,* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0223.

Title: Section 90.129(b), Supplemental Information to Be Routinely Submitted with Applications, Non-type Accepted Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: .33 hours (4 minutes).

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 154(i), 161, 303(g), 303(r), and 332(c)(7).

Total Annual Burden: 3 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: This does not address any private matters of a sensitive nature with the exception of the personally identifiable information (PII) that individuals are required to maintain.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirement). The Commission will submit this information collection after this 60 day comment period. Section 90.129(b) requires applicants proposing to use transmitting equipment that is not type-certified by FCC laboratory personnel to provide a description of the proposed equipment. This assures that the equipment is capable of performing within certain tolerances that limit the interference potential of the device. The information collected is used by FCC engineers to determine the interference potential of the proposed equipment.

OMB Control No.: 3060–0347.

Title: Section 97.311, Spread Spectrum (SS) Emission Types.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: .017 hours (1 minute).

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151–155, and 301–609.

Total Annual Burden: 1 hour.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: This collection does not address any private matters of a sensitive nature with the exception of personally identifiable information (PII) that individuals are required to maintain. In instances where consumers provide personally identifiable information, the FCC has a System of Records Notice (SORN), FCC/WTB–1, and ''Wireless Services Licensing Records.''

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the recordkeeping requirement). The Commission will submit this information collection after this 60 day comment period.

The recordkeeping requirement in section 97.311 is necessary to document all spread spectrum (ss) transmissions by amateur radio operators. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

The information is used by the FCC staff during inspections and investigations to ensure compliance with applicable rules, statutes, and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to the solution of harmful interference would be severely hampered and needlessly prolonged due to the inability to quickly obtain vital information used to demodulate spread spectrum transmissions.

OMB Control No.: 3060–1008.

Title: Section 27.50, Power and Antenna Height Limits; and Section 27.602, Guard Band Manager Agreements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local or Tribal Government.

Number of Respondents: 580 respondents; 580 responses.

Estimated Time per Response: 30 minutes–6 hours.

Frequency of Response: On occasion reporting requirements, recordkeeping 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. sections 151, 154(i), 157 and 309(j).

Total Annual Burden: 631 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting, recordkeeping and/or third party disclosure requirements). The Commission will submit this information collection after this 60 day comment period.

The Commission adopted allocation and service rules for the 698–746 MHz spectrum band, which was reallocated pursuant to statutory requirements, in order to support the development of new services in the Lower 700 MHz band while still protecting television operations that continue to occupy the band throughout the transition to digital television.

Section 27.50(c)(8) covers stations operating ''at a power level greater than 1Kw ERP and is now ''under the provisions of (c)(6),'' which defines the

group as ''transmitting a signal at an ERP greater than 1000 watts and greater than 100 watts/MHz'' or in rural counties ''if transmitting a signal with an ERP greater than 2000 watts and greater than 2000 watts/MHz.''

Specifically, Lower 700 MHz licensees intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (c)(6) must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized under this part to operate on an adjacent spectrum block within 75 km of the base or fixed station. Notifications must provide the location and operating parameters of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation.

Pursuant to section 27.602, Guard Band Managers are required to enter into written agreements regarding the use of their licensed spectrum by others, subject to certain conditions outlined in the rules. Section 27.602(h) requires Guard Band Managers to maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date of such agreements expire. Such records shall be kept current and be made available upon request for inspection by the Commission or its representatives.

The service rules have been designed to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public; to promote economic opportunity and competition; and to create an efficient and intensive use of the spectrum by promoting the objectives identified in 47 U.S.C. section 309(j) of the Communications Act of 1934, as amended, and to alleviate any problems associated with the increase power limits available to rural licensees.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–18604 Filed 7–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket Nos. 03–123 and 10–51; FCC 11–104]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Notice; approval of new rates.

SUMMARY: In this document, the Commission extends the current tiered, per-minute video relay service (''VRS'') compensation rates, and adopts per-minute compensation rates for the July 1, 2011 through June 30, 2012 Interstate Telecommunications Relay Services (''TRS'') Fund (''Fund'') year for all other forms of TRS. This action is necessary because the rates for the previous Fund year expired on June 30, 2010. The intended effect of this action is to establish reimbursement rates for TRS providers and an appropriate funding requirement for the 2011–2012 Fund year.

DATES: The new rates became effective July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–7126 (voice), (202) 418–7828 (TTY), or e-mail at *Diane.Mason@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* Order, document FCC 11–104, adopted June 30, 2011, and released June 30, 2011 in CG Docket numbers 03–123 and 10–51 (*Order*). The full text of document FCC 11–104 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 11–104 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via its Web site *http://www.bcpiweb.com* or by calling (202) 488–5300. 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 and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document FCC 10–115 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.*

Synopsis

In document FCC 11–104, the Commission adopts per-minute compensation rates to be paid from the Fund for the 2011–12 Fund year for all forms of TRS. Except for the rates for video relay service VRS, these rates are based on the proposals of the Fund administrator. For VRS, the Commission adopts, until further notice, the current interim rates that were adopted for the 2010–11 Fund year. The VRS rates adopted herein will be in effect on an interim basis until the Commission completes its examination of VRS rates and compensation as part of the *2010 VRS NOI* proceeding. *See Structure and Practices of the Video Relay Service Program,* CG Docket No. 10–51, Notice of Inquiry, published at 75 FR 41863, July 19, 2010 (*2010 VRS NOI*).

As of July 1, 2011, the per-minute rates for TRS shall be: $1.8611 for interstate traditional TRS; $2.9921 for Speech-to-Speech (STS) service; $1.7630 for captioned telephone service (CTS) and Internet-Protocol (IP) CTS; and $1.2920 for IP Relay. The interim rates for VRS shall continue to be: $6.2390 for Tier I, $6.2335 for Tier II, and $5.0668 for Tier III. Based on the adoption of these rates and the Fund administrator's proposals for additional funding requirements, the Commission adopts a carrier contribution factor of 0.01058, and a funding requirement of $740,399,393.56 for the period of July 1, 2011 through June 30, 2012.

On March 7, 2011, the Commission awarded a contract to Rolka Loube Saltzer Associates, LLC (''RLSA'') to administer the Fund beginning July 1, 2011. RLSA's administrative expenses of $965,000 under the contract are included in the previous Fund administrator's proposed funding requirement for the 2011–12 Fund year.

In addition to the per-minute costs of service and administrator costs, the Commission adopts additional funding for the expenses of the revenue data collection agent of $60,000, expenses related to the Interstate TRS Advisory Council of $55,000, expenses related to an audit of the Fund administrator of $50,000, the contractual costs of $385,000 for the iTRS database administrator in its funding requirement

proposal, and a $10,000,000 funding requirement for the National Deaf-Blind Equipment Distribution Program (NDBEDP) mandated by Congress.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will send a copy of document FCC 11–104 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).

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (''RFA'') requires that a final regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 605(b). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). 15 U.S.C. 632.

In document FCC 11–104, the Commission adopts per-minute compensation rates for the Interstate Telecommunications Relay Services Fund for the 2011–2012 Fund year for all forms of TRS except for video relay service (''VRS''). The current interim VRS rates adopted for the 2010–2011 Fund year will be extended based on the proposal of the Fund administrator, as well as the record in the *VRS Rate NPRM* proceeding, published at 76 FR 24442, May 2, 2011. As of July 1, 2011, the interim rates for VRS shall continue to be: $6.2390 for Tier I, $6.2335 for Tier II, and $5.0668 for Tier III. The rates for the other forms of TRS shall be: $1.8611 for interstate traditional TRS; $2.9921 for Speech-to-Speech service (''STS''); $1.7630 for captioned telephone service (''CTS'') and Internet Protocol (''IP'') CTS; and $1.2920 for IP Relay.

The VRS rates adopted in document FCC 11–104 are interim rates, and the Commission will continue to examine VRS compensation as part of the *2010 VRS NOI* proceeding. Based on the adoption of these rates for VRS as well as for the other forms of TRS, and NECA's proposals for additional funding requirements, the Commission adopts a carrier contribution factor of 0.01058, and a funding requirement of $740,399,393.56 for the 2011–2012 Fund year.

In regard to VRS, the Commission sought comment on extending the current VRS rates for the upcoming Fund year in the *VRS Rate NPRM* proceeding. In the attached initial regulatory flexibility certification, the Commission concluded that its proposal would not impose a financial burden on entities, including small businesses, because eligible entities would continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently reimbursed for VRS. No commenters opposed this proposal or the associated initial regulatory flexibility certification.

In document FCC 11–104, the Commission adopts its proposal to extend VRS rates, and determines that this extension will not place any financial burden on VRS entities, including small VRS businesses, because these entities will continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently reimbursed.

In addition, with respect to 2011–2012 rates adopted in document FCC 11–104 to apply to entities other than VRS, *i.e.* to TRS, STS, CTS, IP CTS, and IP Relay entities, the rates for the latter group of entities are based on the same methodology used in adopting rates for the last Fund year. Therefore, the Commission determines that there is no financial burden caused by the adoption of the rates for TRS, STS, CTS, IP CTS, and IP Relay for entities, including small businesses, because these entities will also continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently reimbursed.

Therefore, the Commission certifies that the proposal in document FCC 11–104 does not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of the document FCC 11–104, including a copy of the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

Pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and 64.604(c)(5)(iii) of the Commission's rules, 47 CFR 64.604(c)(5)(iii), document FCC 11–104 *Is Adopted.*

The TRS Fund Administrator shall compensate providers of interstate traditional TRS for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $1.8611 per completed interstate conversation minute.

The TRS Fund Administrator shall compensate providers of interstate Speech-to-Speech service for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $2.9921 per completed interstate conversation minute.

The TRS Fund Administrator shall compensate providers of interstate captioned telephone service and intrastate and interstate IP captioned telephone service for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $1.7630 per completed conversation minute.

The TRS Fund Administrator shall compensate providers of intrastate and interstate IP Relay service for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $1.2920 per completed conversation minute.

Beginning July 1, 2011, the TRS Fund administrator shall continue to compensate eligible providers of intrastate and interstate video relay service at the rates of $6.2390 for the first 50,000 monthly minutes (Tier I), $6.2335 for monthly minutes between 50,001 and 500,000 (Tier II), and $5.0668 for minutes above 500,000 (Tier III) per completed conversation minute until otherwise directed by the Commission.

The Interstate TRS carrier contribution factor shall be 0.01058, and the funding requirement shall be $740,399,393.56, and the, for the July 1, 2011 through June 30, 2012 Fund year.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–18744 Filed 7–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval the continuing information collections (extensions with no changes) described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted at the addresses below on or before August 24, 2011 to be assured of consideration.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Kristy L. Daphnis, Desk Officer for Federal Maritime Commission, 725 17th Street, NW., Washington, DC 20503, *OIRA_Submission@omb.eop.gov,* Fax (202) 395–5167.

and to:

Ronald D. Murphy, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, Telephone: (202) 523–5800, *omd@fmc.gov.*

Please send separate comments for each specific information collection listed below, and reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Jane Gregory on 202–523–5800 or *e-mail: jgregory@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Commission invites the general public and other Federal agencies to comment on proposed information collections. On May 3, 2011, the Commission published a notice and request for comments in the **Federal Register** (76 FR 24881) regarding the agency's request for continued approval from OMB for information collections as required by the Paperwork Reduction Act of 1995. The Commission received no comments on any of the requests for extensions of OMB clearance. The Commission has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collections Open for Comment

Title: 46 CFR part 540—Application for Certificate of Financial Responsibility/Form FMC–131.

OMB Approval Number: 3072–0012 (Expires August 31, 2011).

Abstract: Sections 2 and 3 of Public Law 89–777 (46 U.S.C. 44105–44106) require owners or charterers of passenger vessels with 50 or more passenger berths or stateroom accommodations and embarking passengers at United States ports and territories to establish their financial responsibility to meet liability incurred for death or injury to passengers and other persons, and to indemnify passengers in the event of nonperformance of transportation. The Commission's Rules at 46 CFR part 540 implement Public Law 89–777 and specify financial responsibility coverage requirements for such owners and charterers.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The information will be used by the Commission's staff to ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: This information is collected when applicants apply for a certificate or when existing certificants change any information in their application forms.

Type of Respondents: The types of respondents are owners, charterers and operators of passenger vessels with 50 or more passenger berths that embark passengers from U.S. ports or territories.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 45.

Estimated Time per Response: The time per response ranges from 0.5 to 8 hours for reporting and recordkeeping requirements contained in the rules, and 8 hours for completing Application Form FMC–131.

Total Annual Burden: The Commission estimates the total hour burden at 1,294 hours.

Title: 46 CFR part 565—Controlled Carriers.

OMB Approval Number: 3072–0060 (Expires August 31, 2011).

Abstract: Section 9 of the Shipping Act of 1984, 46 U.S.C. 40701–40706, requires that the Commission monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. 46 CFR part 565 establishes the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Shipping Act of 1984. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

Frequency: The submission of notifications from controlled carriers is not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant. The Commission only requires notification when a majority portion of an ocean common carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

Type of Respondents: Controlled carriers are ocean common carriers which are owned or controlled by a government.

Number of Annual Respondents: It is estimated that 9 of the currently classified controlled carriers may respond in any given year. Classifications are reviewed periodically to determine current status of respondents and to increase or decrease the number of controlled carriers based

on new circumstances. The Commission cannot anticipate when a new carrier may enter the United States trade; therefore, the number of annual respondents may fluctuate from year to year and could increase to 10 or more at any time.

Estimated Time per Response: The estimated time for compliance is 7 hours per year.

Total Annual Burden: The Commission estimates the hour burden required to make such notifications at 63 hours per year.

Title: 46 CFR part 525—Marine Terminal Operator Schedules and Related Form FMC–1.

OMB Approval Number: 3072–0061 (Expires August 31, 2011).

Abstract: Section 8(f) of the Shipping Act of 1984, 46 U.S.C. 40501(f), provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 20, of which 12 opt to make their schedules available to the public.

Estimated Time per Response: The time per response for completing Form FMC–1 averages 0.5 hours, and approximately 5 hours for related MTO schedules.

Total Annual Burden: The Commission estimates the total burden at 70 hours.

Title: 46 CFR part 520—Carrier Automated Tariff Systems and Related Form FMC–1.

OMB Approval Number: 3072–0064 (Expires August 31, 2011).

Abstract: Except with respect to certain specified commodities, section 8(a) of the Shipping Act of 1984, 46 U.S.C. 40501(a)-(c), requires that each common carrier and conference shall keep open to public inspection, in an automated tariff system, tariffs showing its rates, charges, classifications, rules, and practices between all ports and points on its own route and on any through transportation route that has been established. In addition, individual carriers or agreements among carriers are required to make available in tariff format certain enumerated essential terms of their service contracts. 46 U.S.C. 40502. The Commission is responsible for reviewing the accessibility and accuracy of automated tariff systems, in accordance with its regulations set forth at 46 CFR part 520.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to ascertain the location of common carrier and conference tariff publications, and to access their provisions regarding rules, rates, charges and practices.

Frequency: This information is collected when common carriers or conferences publish tariffs.

Type of Respondents: Persons desiring to operate as common carriers or conferences.

Number of Annual Respondents: The Commission estimates there are 4,200 Carrier Automated Tariffs. It is estimated that the number of annual respondents will be 1,300.

Estimated Time per Response: The time per response ranges from 0.1 to 2 hours for reporting and recordkeeping requirements contained in the rules, and 0.5 hours for completing Form FMC–1.

Total Annual Burden: The Commission estimates the total hour burden at 4,278 hours.

Title: 46 CFR part 530—Service Contracts and Related Form FMC–83.

OMB Approval Number: 3072–0065 (Expires August 31, 2011).

Abstract: Section 8(c) of the Shipping Act of 1984, 46 U.S.C. 40502, requires service contracts, except those dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, and their related amendments and notices to be filed confidentially with the Commission.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission monitors service contract filings for acts prohibited by the Shipping Act of 1984.

Frequency: The Commission has no control over how frequently service contracts are entered into; this is solely a matter between the negotiating parties. When parties enter into a service contract, it must be filed with the Commission.

Type of Respondents: Parties that enter into service contracts are ocean common carriers and agreements among ocean common carriers on the one hand, and shippers or shipper's associations on the other.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 141.

Estimated Time per Response: The time per response ranges from 0.1 to 1 hour for reporting and recordkeeping requirements contained in the rules, and 0.1 hour for completing Form FMC–83.

Total Annual Burden: The Commission estimates the total hour burden at 79,370 hours.

Title: 46 CFR part 531—NVOCC Service Arrangements and Related Form FMC–78.

OMB Approval Number: 3072–0070 (Expires August 31, 2011).

Abstract: Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, authorizes the Commission to exempt by rule ''any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.'' 46 CFR part 531 allows non-vessel-operating common carriers (NVOCCs) and shippers' associations with NVOCC members to act as shipper parties in NVOCC Service Arrangements (NSAs), and to be exempt from certain tariff publication requirements of the Shipping Act provided the carriage in question is done pursuant to an NSA filed with the Commission and the essential terms are published in the NVOCC's tariff.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses filed NSAs and associated data for monitoring and investigatory purposes

and, in its proceedings, to adjudicate related issues raised by private parties.

Frequency: The filing of NSAs is not assigned a specific time by the Commission; NSAs are filed as they may be entered into by private parties. When parties enter into an NSA, it must be filed with the Commission.

Type of Respondents: Parties that enter into NSAs are NVOCCs and shippers' associations with NVOCC members.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 145.

Estimated Time per Response: The time per response ranges from 0.1 to 1 hour for reporting and recordkeeping requirements contained in the rules, and 1 hour for completing Form FMC–78.

Total Annual Burden: The Commission estimates the total hour burden at 1,186 person-hours.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–18648 Filed 7–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Ace Maritime, Inc. (NVO), 5201 Lincoln Avenue, #233, Cypress, CA 90630, Officers: Cindy J. Lee, Secretary/CFO, (Qualifying Individual), Kathlyn Park, CEO, *Application Type:* New NVO License.

Advanced Maritime Transport, Inc. (NVO & OFF), 1704 Rankin Road, Suite 110, Houston, TX 77073, *Officers:* Sandy Lance, Secretary, (Qualifying Individual), Alain Vedrine, President/Vice President, *Application Type:* QI Change.

Alaska Seavan, Inc. dba Mitchell Moving & Storage (OFF), 18800 Southcenter Parkway, Seattle, WA 98188, *Officers:* Charles K. Behrens, President, (Qualifying Individual), Todd L. Halverson, CEO, *Application Type:* New OFF License.

Annam Cargo, Inc. (NVO & OFF), 1340 Tully Road, # 308, San Jose, CA 95122, *Officers:* Tuan S. Huynh, President, (Qualifying Individual), Tam M. Nguyen, Secretary/CFO, *Application Type:* New NVO & OFF License.

Atlas Logistics LLC (NVO & OFF), 2801 NW 74th Avenue, Suite 171, Miami, FL 33122, *Officer:* Louissana Dappo, MGRM, (Qualifying Individual), *Application Type:* New NVO & OFF License.

Bulk Cargo Services & Logistics Inc. (OFF), 15400 N.E. 103rd Drive, Vancouver, WA 98682, *Officers:* Darrell L. Bryant, President, (Qualifying Individual), Bruce R. Skerry, Vice President, *Application Type:* New OFF License.

CargoLogic USA LLC (NVO & OFF), 182–16 149th Road, #212, Springfield Gardens, NY 11413, *Officers:* Matvey Gurfinkel, Vice President, (Qualifying Individual), Alex Epshteyn, President/Secretary, *Application Type:* New NVO & OFF License.

D. Kratt International, Inc. (OFF), 25 West Higgins Road, #140–150, Hoffmann Estates, IL 60169, *Officers:* Rebecca M. Kennedy, Vice President, (Qualifying Individual), David P. Kratt, President, *Application Type:* QI Change.

Direct Freight Services LLC (NVO), 1810 NW 51st Place, Hanger 40A, Ft. Lauderdale, FL 33309, *Officers:* Neil T. Marshall, Member/Chief Executive Manager, (Qualifying Individual), Stina Storr, Member/Managing Member, *Application Type:* New NVO License.

Empire Consolidators, Inc. (NVO & OFF), 60 Terrehans Lane, Syosset, NY 11791, *Officer:* Vivian C. Chan, President/VP/Secretary/Treasurer, (Qualifying Individual), *Application Type:* New NVO and OFF License.

Equipsa Inc. (OFF), 2105 NW 102 Avenue, Miami, FL 33172, *Officers:* Eduardo del Pozo, General Manager, (Qualifying Individual), Arthur S. Gelfand, President, *Application Type:* QI Change.

Equipsa N.V.O.C.C. Inc. (NVO), 2105 NW 102 Avenue, Miami, FL 33172, *Officers:* Eduardo del Pozo, General Manager, (Qualifying Individual), Arthur S. Gelfand, President, *Application Type:* QI Change.

Foothills Logistics, Inc. dba Foothills Logistics of Florida, Inc. (NVO), 2045 John Crosland Jr. Way, Charlotte, NC 28208, *Officers:* William A. Pottow, Vice President, (Qualifying Individual), Janine A. Antonio, President, *Application Type:* License Transfer.

Green World Cargo, LLC (NVO), 150–30 132nd Avenue, #302, Jamaica, NY 11434, *Officers:* Harjinder P. Singh, President/Chief Executive Manager, (Qualifying Individual), Salvatore J. Stile, II, Manager, *Application Type:* New NVO License.

Guardian Marine LLC (NVO), 600 Glenrose Drive, Allen, TX 75013, *Officers:* Don F. Mcnally, Managing Member, (Qualifying Individual), Don A. Mcnally, Managing Member, *Application Type:* New NVO License.

International Bonded Couriers, Inc. (NVO), 8401 NW 17th Street, Miami, FL 33126, *Officers:* Rocio Liriano, Vice President of Logistics, (Qualifying Individual), Seddik Si Hassen, President, *Application Type:* New NVO License.

IWIN Group Corp. (NVO), 1055 E. Colorado Blvd., Suite 5113, Pasadena, CA 91106, *Officers:* Honggang Liu, Secretary/CFO/Treasurer, (Qualifying Individual), Yaoyao (Jessie) Guo, CEO/President, *Application Type:* QI Change.

Kamino International Transport, Inc. (NVO & OFF), 145th Avenue & Hook Creek Blvd., Valley Stream, NY 11581, *Officers:* Jeffrey Hudson, Vice President of Operations, (Qualifying Individual), Robert Snelson, Director/CEO, *Application Type:* QI Change.

M E Dey Cargo Corporation dba Orient Grace Container Lines(NVO & OFF), 510 Plaza Drive, #1210, College Park, GA 30349, *Officers:* Joshua Wolf, President, (Qualifying Individual), Robert Gardenier, Director, *Application Type:* New NVO & OFF License.

Newtrans Overseas, Inc. (NVO & OFF), 8939 S. Sepulveda Blvd., #225, Los Angeles, CA 90045, *Officers:* Walter Rozario, President/CEO, (Qualifying Individual), Shoeba Rozario, Secretary, *Application Type:* New NVO & OFF License.

NUCO Logistics, Inc. (NVO & OFF), 500 S. Kraemer Blvd., Suite 395, Brea, CA 92821, *Officers:* Noushin Shamsili, President, (Qualifying Individual), Farid Tahvildari, Vice President/Treasurer, *Application Type:* QI Change.

Sicomex International Corp (NVO & OFF), 8458 NW 70th Street, Miami, FL 33166, *Officers:* Angelica Boscan, Treasurer, (Qualifying Individual), Tayme Cabeza, President, *Application Type:* New NVO & OFF License.

Sisto International Shipping, Inc. (OFF), 10255 NW 116 Way, #3, Medley, FL 33178, *Officers:* Raymond Fleites,

Director/President/Secretary/Treasurer, (Qualifying Individual), Tracy Sisto, Vice President, *Application Type:* QI Change.

Soo Hoo Customs Broker Inc. dba Soo Hoo Shipping (NVO & OFF), 6440 Corvette Street, Commerce, CA 90040, *Officer:* Brian S. Soo Hoo, President, (Qualifying Individual), *Application Type:* Add NVO Service,

Sun Fine Systems, Inc. dba Marquis Logistics (NVO & OFF), 13460 Brooks Drive, Baldwin Park, CA 91706, *Officers:* David Sun, Secretary, (Qualifying Individual), Kevin Tang, Director/President/CEO/Treasurer/CFO, *Application Type:* Add OFF Service.

TSJ Logistics (NVO & OFF), 249 W. Fernfield Drive, Monterey Park, CA 91754, *Officer:* Tony Chen, President/VP/Secretary/Treasurer, (Qualifying Individual), *Application Type:* New NVO & OFF License.

TM Express, LLC (NVO), 16925 Colchester Way, Hacienda Heights, CA 91745, *Officer:* Merlinda V. Tan, Member, (Qualifying Individual), *Application Type:* New NVO License.

Transitainer, LLC (NVO & OFF), 100 W. Broadway, Suite 350, Long Beach, CA 90802, *Officers:* Rosemarie (Rosie) Dagley, Vice President, (Qualifying Individual), Paul Vassie, President, *Application Type:* New NVO & OFF License.

UA Freight Services LLC (NVO), 20559 S. Vermont Street, Suite 2, Torrance, CA 90502, **OFFICER:** Umamart Angsirilawan, Manager, (Qualifying Individual), *Application Type:* New NVO License.

USKO Shipping Inc. (NVO & OFF), 520 Houston Street, West Sacramento, CA 95691, *Officers:* Anna A. Skots, Vice President/Director, (Qualifying Individual), Vitaliy Z. Skots, President/Treasurer/Director, *Application Type:* New NVO & OFF License.

Valueway Global Logistics Inc. (NVO), 104 S. Central Avenue, Room 2, Valley Stream, NY 11580, *Officers:* Yan Yan (Sherry) Zhang, Vice President, (Qualifying Individual), Qian Xie, President/Secretary/Treasurer, *Application Type:* QI Change.

Welco International Services, Inc. (NVO & OFF), 3020 West Lobo Ridge, New Albany, IN 47150, *Officer:* Christopher M. Welch, President/Secretary, (Qualifying Individual), *Application Type:* Add NVO Service.

Dated: July 19, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–18649 Filed 7–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
022113N	Movendo USA, Inc., 1110 South Avenue, Suite 33, Staten Island, NY 10301	June 2, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–18651 Filed 7–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 000167NF.
Name: Westfeldt Brothers Forwarders Inc. dba Global Direct Lines.
Address: 6101 Terminal Drive, New Orleans, LA 70115.
Date Revoked: June 3, 2011.
Reason: Failed to maintain valid bonds.

License Number: 001362F.
Name: Malvar Freight Forwarding Service, Inc.
Address: 4141 NW 36th Avenue, Miami, FL 33142.
Date Revoked: June 30, 2011.
Reason: Failed to maintain a valid bond.

License Number: 003644NF.
Name: Forward Logistics Group, Inc.
Address: 10651 Satellite Blvd., Orlando, FL 32837.
Date Revoked: June 11, 2011.
Reason: Failed to maintain valid bonds.

License Number: 003704N.
Name: American One Freight Forwarders, Inc.
Address: 3515 NW 114th Avenue, Doral, FL 33178.
Date Revoked: June 23, 2011.
Reason: Failed to maintain a valid bond.

License Number: 012927N.
Name: Asecomer International Corporation dba Interworld Freight, Inc. dba Junior Cargo, Inc.
Address: 8225 NW 80th Street, Miami, FL 33166.
Date Revoked: June 22, 2011.
Reason: Failed to maintain a valid bond.

License Number: 015605N.
Name: Solid Trans Inc.
Address: 1401 S. Santa Fe Avenue, Compton, CA 90221.
Date Revoked: June 5, 2011.
Reason: Failed to maintain a valid bond.

License Number: 017807N.
Name: Spartan Shipping, Inc.
Address: 1890 NW 82th Avenue, Suite 110, Miami, FL 33126.
Date Revoked: June 23, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019364F.
Name: New Life Health Care Services, LLC. dba New Life Marine Services.
Address: 3527 Brackenfern Road, Katy, TX 77449.
Date Revoked: June 9, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019411N.
Name: General Express Freight, Inc.
Address: 10501 Valley Blvd., Suite 1804, El Monte, CA 91731.
Date Revoked: June 22, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019417NF.
Name: Senaduana Freight Forwarders, Inc.
Address: 7778 NW 46th Street, Miami, FL 33166.
Date Revoked: June 12, 2011.
Reason: Failed to maintain valid bonds.

License Number: 019597N.
Name: United Cargo International, Inc.
Address: 24782 Industrial Blvd., Bldg. F, Suite 7, Hayward, CA 94545.
Date Revoked: June 4, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019835F.
Name: AM Worldwide, Inc.
Address: 2928 B Greens Road, Suite 450, Houston, TX 77032.
Date Revoked: June 3, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020297N.
Name: Lorimer Cargo Express, Inc.
Address: 6546 Pembroke Road, Miramar, FL 33023.
Date Revoked: June 6, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020693F.
Name: Jamaica Worldwide Shipping Inc. dba Caribeuro Shipping.
Address: 4101 Elrey Road, Suite 14–A, Orlando, FL 32808.
Date Revoked: June 1, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020912N.
Name: CNF International, Inc.
Address: 550 E. Carson Plaza, Suite 112, Carson, CA 90746.
Date Revoked: June 18, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021812N.
Name: Felman Cargo Group, LLC.
Address: 94–877 Farrington Hwy, Suite B, Waipahu, HI 96797.
Date Revoked: June 24, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021890F.
Name: Empire Global Logistics, LLC.
Address: 160–51 Rockaway Blvd., Suite 206, Jamaica, NY 11434.
Date Revoked: June 9, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021930NF.
Name: Huntington International, Inc.
Address: 411 E. Huntington Drive, Suite 312, Arcadia, CA 91006.
Date Revoked: June 22, 2011.
Reason: Failed to maintain valid bonds.

License Number: 022113F.
Name: Movendo USA, Inc.
Address: 1110 South Avenue, Suite 33, Staten Island, NY 10301.
Date Revoked: June 2, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022541NF.
Name: Oceanair Forwarding, Inc.
Address: 11232 St. Johns Industrial Parkway North, Suite 6, Jacksonville, FL 32246.
Date Revoked: June 13, 2011.
Reason: Failed to maintain valid bonds.

License Number: 022605F.
Name: AK Solutions Inc.
Address: 10034 Halston Drive, Sugarland, TX 77498.
Date Revoked: June 2, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022639NF.
Name: Geevee Enterprises, Inc. dba Aerosend.
Address: 245 W. Roosevelt Road, Bldg. 12, Unit 90, West Chicago, IL 60185.
Date Revoked: June 25, 2011.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 2011–18650 Filed 7–22–11; 8:45 am]
BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[Notice: CIB–2011–3; Docket 2011–0004; Sequence 3]

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Updated Notice.

SUMMARY: GSA reviews its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. This notice is an updated Privacy Act system of records notice.

DATES: Effective August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privacyact@gsa.gov*.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1275 First Street, NE., Washington, DC 20417.

SUPPLEMENTARY INFORMATION: GSA completed an agency wide review of its Privacy Act systems of records. As a result of the review, GSA is publishing an updated Privacy Act system of records notice. The system contains information needed to identify potential and actual bidders and awardees, and transaction information involving personal property sales. System records include: (1) Personal information provided by bidders and buyers, including, but not limited to, names, phone numbers, addresses, Social Security Numbers, birth dates and credit card numbers or other banking information, and (2) contract information on Federal personal property sales, including whether payment was received, the form of the payment, notices of default, and contract claim information.

Dated: July 19, 2011.

Cheryl M. Paige,
Director, Office of Information Management.

GSA/FSS–13

SYSTEM NAME:

Personal Property Sales Program.

SYSTEM LOCATION:

System records are maintained by the General Services Administration (GSA) at several locations within the United States including the Unisys Data Center in Egan, Minnesota, and the Unisys Data Center in Salt Lake City, Utah. A complete list of the locations is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include those individuals who request to be added to GSA bidders mailing lists, register to bid on GSA sales, and/or enter into contracts to buy Federal personal property at sales conducted by GSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to identify potential and actual bidders and awardees, and transaction information involving personal property sales. System records include:

a. Personal information provided by bidders and buyers, including, but not limited to, names, phone numbers, addresses, Social Security Numbers, birth dates and credit card numbers or other banking information; and

b. Contract information on Federal personal property sales, including whether payment was received, the form of the payment, notices of default, and contract claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 121(c) and 40 U.S.C. 541, *et seq*.

PURPOSE:

To establish and maintain a system of records for conducting public sales of Federal personal property by GSA.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to prepare for and conduct personal property sales, administer sales contracts, perform oversight or maintenance of the GSA electronic systems and, when necessary, for sales contract litigation or non-procurement suspension or debarment purposes.

INFORMATION FROM THIS SYSTEM ALSO MAY BE DISCLOSED AS A ROUTINE USE:

a. In any criminal, civil, or administrative legal proceeding, where pertinent, to which GSA, a GSA employee, or the United States or other entity of the United States Government is a party before a court or administrative body.

b. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and/or an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency, state, local, tribal or other public authority in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation, the letting of a contract, or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty related to the contract or appointment to which the information is relevant.

g. To the GSA Office of Finance for debt collection purposes (see GSA/PPFM–7).

h. To the National Archives and Records Administration (NARA) for records management purposes.

i. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

j. To a Federal, state, local, or tribal agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation; or to an agency, individual or organization, if there is reason to believe that such agency, individual or organization possesses information or is responsible for acquiring information relating to the investigation, trial or hearing, and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

k. To the Office of Management and Budget (OMB) when necessary to the review of private relief legislation pursuant to OMB circular No. A–19.

l. To designated agency personnel for controlled access to specific records for the purpose of performing authorized audit or oversight functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND RETAINING, AND DISPOSING OF SYTEM RECORDS:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

RETRIEVABILITY:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A–130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Access is limited to those individuals with a need to know and access the information. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures. Electronic systems are compliant with the standards established by the National Institute of Standards and Technology.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in CIO P 1820.1, GSA Records Maintenance and Disposition System, and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Property Management Division (FBP), Federal Supply Service, General Services Administration, 2200 Crystal Drive, Crystal Plaza 4, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURE:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is provided by individuals who wish to participate in the GSA personal property sales program, and system transactions designed to gather and maintain data and to manage and evaluate the Federal personal property disposal program.

[FR Doc. 2011–18637 Filed 7–22–11; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board; Call for Nominees

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of the Secretary is accepting resumes or curricula vitae from qualified individuals who wish to be considered for membership on the National Biodefense Science Board. Seven members have membership expiration dates of December 31, 2011; therefore seven new voting members

will be selected for the Board. Nominees are being accepted in the following categories: Industry; academia, practicing healthcare professional, and organizations representing other appropriate stakeholders. Submit a resume or curriculum vitae *nbsb@hhs.gov* by August 19, 2011.

FOR FURTHER INFORMATION CONTACT: CAPT Leigh A. Sawyer, D.V.M., M.P.H., Executive Director, National Biodefense Science Board, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, 330 C Street, SW., Switzer Building Room, 5127, Washington, DC 20447; 202–205–3815; fax: 202–205–8508; e-mail address: *leigh.sawyer@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary and/or the Assistant Secretary for Preparedness and Response (ASPR) on other matters related to public health emergency preparedness and response.

Description of Duties: The Board shall advise the Secretary and/or ASPR on current and future trends, challenges, and opportunities presented by advances in biological and life sciences, biotechnology, and genetic engineering with respect to threats posed by naturally occurring infectious diseases and chemical, biological, radiological, and nuclear agents. At the request of the Secretary and/or ASPR, the Board shall review and consider any information and findings received from the working groups established under 42 U.S.C. 247d–7f(b). At the request of the Secretary and/or ASPR, the Board shall provide recommendations and findings for expanded, intensified, and coordinated biodefense research and development activities. Additional advisory duties concerning public health emergency preparedness and response may be assigned at the discretion of the Secretary and/or ASPR.

Structure: The Board shall consist of 13 voting members, including the Chairperson; additionally, there may be non-voting ex officio members. Members and the Chairperson shall be appointed by the Secretary from among the Nation's preeminent scientific, public health and medical experts, as follows: (a) Such Federal officials as the Secretary determines are necessary to support the functions of the Board, (b) four individuals from the pharmaceutical, biotechnology and device industries, (c) four academicians, and (d) five other members as determined appropriate by the Secretary and/or ASPR, one of whom must be a practicing health care professional and one of whom must be from an organization representing health care consumers. Additional members for category (d), above, will be selected from among State and local governments and public health agencies, emergency medical responders and organizations representing other appropriate stakeholders. A member of the Board described in (b), (c), and (d) in the above paragraph shall serve for a term of 3 years, except that the Secretary may adjust the terms of the initial Board appointees in order to provide for a staggered term of appointment of all members. Members who are not fulltime or permanent part-time Federal employees shall be appointed by the Secretary as Special Government Employees.

Dated: July 18, 2011.

Nicole Lurie,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. 2011–18756 Filed 7–22–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-11–11DE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at 404–639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Communication Research on Folic Acid to Support the Division of Birth Defects and Developmental Disabilities—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since mandatory folic acid fortification of cereal grain products was mandated in 1998, rates of folic acid-preventable neural tube defects (NTDs) have declined. Disparities in rates remain, however, with NTD prevalence being highest among Hispanic women of childbearing age. Efforts to increase consumption of vitamin supplements containing folic acid among women in this ethnic group have been ongoing, however, due to differences in diet, many of these women have not benefitted from food fortification to the extent that other race/ethnic groups have. A performance goal for NCBDDD focuses specifically on the reduction of these disparities: *Reduce health disparities in the occurrence of folic acid-preventable spina bifida and anencephaly by reducing the birth prevalence of these conditions.* Moreover, Healthy People 2010 objectives refer to the reduction of NTD rates and increase of folic acid consumption for all women of childbearing age: (1) *Reduce the occurrence of spina bifida and other NTDs; (2) Increase the proportion of pregnancies begun with an optimum folic acid level by increasing the consumption of at least 400 mcg of folic acid each day from fortified foods or dietary supplements by nonpregnant women aged 15 to 44 and increasing the median red blood cell folate level among nonpregnant women aged 15 to 44 years. The 2009 congressional omnibus appropriations language includes reference to reducing health disparities: ''There is significant concern about disparity in the rates of folic acid intake and neural tube defects, particularly in the Hispanic population. Within the funds provided for folic acid, CDC is encouraged to provide increased funding to expand the folic acid education campaign to inform more women and healthcare providers about the benefits of folic acid * * *''.* Finally, CDC partners are working to develop a food additive petition that will be submitted for approval to the

FDA. This petition would allow for the addition of folic acid to corn masa flour and corn masa flour products. Knowing the consumer attitudes toward this endeavor is important to the overall success of the effort. Although up to 70% of neural tube defects can be prevented if a woman consumes folic acid before and during the first weeks of pregnancy, many women are still unaware of folic acid until they are already pregnant. Because half of all pregnancies in the U.S. are unplanned, reaching women with the folic acid message prior to pregnancy is critical. NCBDDD currently has several folic acid educational brochures, tip sheets, and booklets available in both English and Spanish. Since 2000, over 12 million folic acid materials have been distributed. Providing our partners, health care providers, and the public with evidence-based information in a format that is easy to read and visually appealing is important to the mission of the Prevention Research team. We want to ensure that the materials we currently have available still meet the needs of the intended audience.

CDC, with contract support from Battelle Centers for Public Health Research and Evaluation, is conducting research to inform efforts to promote folic acid consumptions among women of child-bearing age through two closely-related data collection efforts: (1) Exploratory Research of Hispanic Women's Reactions to and Beliefs About Folic Acid Fortification of Corn Masa Flour, and (2) Exploratory Research of Childbearing Age Women's Folic Acid Awareness and Knowledge, and their Reactions to Existing CDC Folic Acid Educational Materials. The purpose of the first proposed primary data collection effort is to better understand consumer acceptance of fortifying corn masa flour, a staple product in many traditional Latino, and in particular Mexican, foods. The purpose of the second proposed primary data collection effort is to determine whether educational materials developed over 10 years ago to promote folic acid consumption continue to be appealing and resonate with the target audience today. To address these two purposes and support the folic acid education efforts of CDC, focus groups with the target audience are needed.

For the first data collection activity phase, participants will be English and Spanish-speaking women 18–44 years who self identify as Mexican or Mexican American, or Central American. Participants will be segmented into groups based on whether they consume corn masa flour less than 4 times per day or 4 or more times per day. The contractor will conduct sixteen (16) focus groups with five (5) participants in each focus group. It is estimated that 320 respondents will have to be screened in order to recruit 80 focus group participants. Each screening will take approximately 6 minutes. The estimated response burden for the screening process is 32 hours. The focus group session will be structured to identify women's general awareness and knowledge about folic acid and its role in NTD prevention, perception of their risk for having an affected pregnancy, awareness and knowledge about fortification of cereal grain products, whether fortification of corn masa flour products would change their current reported use of these products, and overall reaction to potential folic acid fortification of these products.

For the second data collection activity phase, focus group participants will be women 18–44 years of age who are not pregnant at the time of the focus groups, who do not have a child with a birth defect such as spina bifida or anencephaly. The contractor will conduct sixteen (16) focus groups with five (5) participants in each focus group. It is estimated that 320 respondents will have to be screened in order to recruit 80 focus group participants. Each screening will take approximately 6 minutes. The estimated response burden for the screening process is 32 hours. Participants will be segmented into groups based on whether they self-identify as either vitamin users (take a vitamin containing folic acid 4–7 days per week) or non-users (take a vitamin containing folic acid less than 4 days per week). The focus group session shall be structured to identify women's awareness and knowledge about folic acid, and how they would like to see folic acid information portrayed in a written format. Focus group participants shall be shown written educational materials that are currently being used and asked questions designed to address whether the materials are effective in getting the folic acid message across to the audience, whether the visual images portrayed in the materials resonate with the audience, and how the materials could be improved. Also, differences based on pregnancy contemplation status shall be explored through segmentation of the focus groups.

Sixteen focus groups will be conducted in both phase one and phase two, with a total of 80 participants in each phase. The focus groups will have five participants each. Each respondent will participate in a 1.5-hour focus group, for a total burden of 120 hours. Data collection materials will be available in both English and Spanish. This request is being submitted to obtain OMB clearance for one (1) year. The total annualized burden for this project is 304 hours. There are no costs to respondents except for their time to participate.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Women 18–44, Mexican or Central American heritage; English and Spanish speakers.	Project One Screener	320	1	6/60
Women 18–44, Mexican or Central American heritage; English and Spanish speakers.	Project One Focus Group Guide.	80	1	1.5
Women 18–44 (English speakers)	Project Two Screener	320	1	6/60
Women 18–44 (English speakers)	Project Two Focus Group Guide.	80	1	1.5

Dated: July 18, 2011.

Daniel L. Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–18705 Filed 7–22–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11FE]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Musculoskeletal Disorder (MSD) Intervention Effectiveness in Wholesale/Retail Trade Operations–New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

For the current study, the National Institute for Occupational Safety and Health (NIOSH) and the Ohio Bureau of Workers Compensation (OBWC) will collaborate on a multi-site intervention study at OBWC-insured wholesale/retail trade (WRT) companies from 2011–2014. In overview, MSD engineering control interventions [stair-climbing, powered hand trucks (PHT) and powered truck lift gates (TLG)] will be tested for effectiveness in reducing self-reported back and upper extremity pain among 960 employees performing delivery operations in 72 WRT establishments using a prospective experimental design (multiple baselines across groups with randomization). The costs of the interventions will be funded through existing OBWC funds and participating establishments. This study will provide important information that is not currently available elsewhere on the effectiveness of OSH interventions for WRT workers.

Twenty-four OBWC-insured WRT establishments will be recruited from each of three total employee categories (<20 employees, 20–99 employees, and 100+ employees) for a total of 72 establishments with 3,240 employees. The study sub-sample (people, work groups or workplaces chosen from the sampling frame) will be volunteer employees at OBWC-insured WRT establishments who perform material handling tasks related to the delivery operations of large items (such as appliances, furniture, vending machines, furnaces, or water heaters) that are expected to be impacted by the powered hand truck (PHT) and truck lift gate (TLG) interventions. It is estimated that there will be 960 impacted employees in the recruited establishments, which will be paired according to previous WC loss history and establishment size. Within each pair, one establishment will be randomly chosen to receive the PHT or TLG intervention in the first phase, and the other will serve as a matched control until it receives the same intervention 12 months later.

The main outcomes for this study are self-reported low back pain and upper extremity pain collected using surveys every three months over a two-year period from volunteer WRT delivery workers at participating establishments. Individuals will also be asked to report usage of the interventions and material handling exposures every three months over two years. Individuals will also be asked to complete an annual health assessment survey at baseline, and once annually for two years. A 20% sample of survey participants will also be asked to participate in a clinical assessment of low back function at baseline, and once annually for two years. In order to maximize efficiency and reduce burden, a Web-based survey is proposed for the majority (95%) of survey data collection. All collected information will be used to determine whether there are significant differences in reported musculoskeletal pain and functional back pain score ratios (pre/post intervention scores) when intervention and control groups are compared, while controlling for covariates. Once the study is completed, results will be made available through the NIOSH Internet site and peer-reviewed publications.

In summary, this study will determine the effectiveness of the tested MSD interventions for WRT delivery workers and enable evidence based prevention practices to be shared with the greatest audience possible. NIOSH expects to complete data collection in 2014. There is no cost to respondents other than their time. The total estimated annual burden hours are 3,001.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
Delivery Workers in Wholesale/Retail Trade (WRT) Operations.	Self-reported low back pain	960	9	5/60
	Self-reported upper extremity pain	960	9	5/60
	Self-reported specific job tasks and safety incidents.	960	9	5/60
	Self-reported general work environment and health.	960	3	10/60
	Informed Consent Form (Overall Study)	960	1	5/60
	Low Back Functional Assessment	192	3	20/60
	Informed Consent Form (Low Back Functional Assessment).	960	1	5/60
	Early Exit Interview	106	1	5/60

Dated: July 18, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–18704 Filed 7–22–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0214]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Health Interview Survey (NHIS), (OMB No. 0920–0214, Expiration 01/31/2013)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2011, 2012, 2013, and 2014 and to increase the sample size for 2011, 2012, and 2013. This voluntary household-based survey collects demographic and health-related information on a nationally representative sample of persons and households throughout the country. Information is collected using computer assisted personal interviews (CAPI). A core set of data is collected each year while sponsored supplements vary from year to year. For 2011, the sample size is proposed to increase from an estimated 35,000 households to an estimated 40,000 households to provide more state-level estimates. The sample size is expected to be further increased to approximately 67,000 households for 2012 and 2013.

In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, diabetes, and access to health care. It is a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives.

There is no cost to the respondents other than their time. As shown below, with the increased sample size, the estimated overall average annual burden for the 2011, 2012, and 2013 surveys is 55,343 hours.

ANNUALIZED BURDEN TABLE

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per respondent in hours
Screener Questionnaire	10,000	1	5/60
Family Core (adult family member)	58,000	1	23/60
Adult Core (sample adult)	44,250	1	14/60
Child Core (adult family member)	17,550	1	9/60
Child Record Check (medical provider)	2,120	1	5/60
Teen Record Check (medical provider)	8,450	1	5/60
Child Immunization Provider (adult family member)	10,570	1	4/60
Supplements (adult family Member)	58,000	1	18/60
Reinterview Survey	4,000	1	5/60

Dated: July 18, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–18701 Filed 7–22–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–244]

Comments and Information Relevant to Mid Decade Review of NORA

AGENCY: Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH).

ACTION: Notice of Public Comment Period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is conducting a review of the processes of the National Occupational Research Agenda (NORA). In 2006, NORA entered its second decade with an industry sector-based structure. In 2011, as NORA reaches the halfway point of its second decade, NIOSH is conducting a review of NORA processes to learn how adjustments can be made to maximize outcomes through the remainder of the second decade (2012–2016). The goal is to look at NORA processes across the ten NORA industry

sectors to provide an inter-sector perspective of the structure and progress of NORA to date. This is also an opportunity to obtain feedback on how to ensure that NORA realizes its full impact potential. We are interested in your comments on NORA processes; activities and accomplishments; and opportunities for adjustments for the future.

Public Comment Period: Comments must be received by August 31, 2011.

ADDRESSES: Written comments may be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C34, Cincinnati, Ohio 45226. All material submitted should reference docket number NIOSH–244 and must be submitted by *August 31, 2011* to be considered by the Agency. All electronic comments should be formatted in Microsoft Word. In addition, comments may be sent via e-mail to *nioshdocket@cdc.gov* or by facsimile to (513) 533–8285. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the electronic docket, including any personal information.

FOR FURTHER INFORMATION CONTACT: Chia Chang, NIOSH, telephone (202) 245–0625, *NORAmiddecade@cdc.gov.*

Dated: July 13, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–18753 Filed 7–22–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–245]

Notice of Public Meeting on the NIOSH Document Titled: ''Criteria for a Recommended Standard: Occupational Exposure to Diacetyl and 2,3-pentanedione''

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) will hold a public meeting to discuss and obtain comments on the draft document, ''Criteria for a Recommended Standard: Occupational Exposure to Diacetyl and 2,3-pentanedione''. A copy of the draft document will be posted on the Internet at *http://www.cdc.gov/niosh/docket/review/docket245/default.html* for Docket number NIOSH–245 on August 12, 2011. This notice serves as advance notice of the meeting and public comment period.

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DATES AND TIME: August 26, 2011, 8 a.m.–4 p.m., Eastern Time. Please note that public comments may end before the time indicated, following the last call for comments. Members of the public who wish to provide comments should plan to attend the meeting at the start time listed.

ADDRESSES: Omni Shoreham, 2500 Calvert, Street NW. (at Connecticut Avenue) Washington, DC 20008.

Status: The meeting is open to the public limited only by the space available. The meeting room accommodates 150 people. To pre-register for the meeting, interested parties should contact the NIOSH Docket Office at *nioshdocket@cdc.gov* or by fax at (513) 533–8285. Due to limited space, notification of intent to attend the meeting must be made to the NIOSH Docket Office no later than August 19, 2011. Priority for attendance will be given to those providing oral comments. Other requests to attend the meeting will then be accommodated on a first-come basis.

Speaker Registration: Persons wanting to provide oral comments on the draft document should contact the NIOSH Docket Office at *nioshdocket@cdc.gov* or by fax at (513) 533–8285. Presenters will be permitted approximately 10 minutes, and will be informed if additional time becomes available. All requests to present should contain the name, address, telephone number, and relevant business affiliations of the presenter, and the topic of the presentation. Oral comments made at the public meeting must also be submitted to the NIOSH Docket Office in writing in order to be considered by the Agency.

Agenda: The meeting will begin with an introduction and presentation by Federal officials, followed by presentations from attendees who register to speak. Each speaker will be limited to ten minutes. If all pre-registered presentations are complete before the end time, there will be an open session to receive comments from anyone who has not signed up on the speaker registration list who may wish to speak. Open session comments will also be limited to 10 minutes per speaker. After the last speaker or at 4 p.m., whichever occurs first, the meeting will be adjourned.

SUPPLEMENTARY INFORMATION:

I. Matters To Be Discussed

At the public meeting, special emphasis will be placed on the following topics:

1. Hazard identification, risk estimation, and discussion of health effects for diacetyl and 2,3-pentanedione;
2. Basis of the Recommended Exposure Limit for diacetyl and 2,3-pentanedione;
3. Workplaces and occupations where exposure to diacetyl and 2,3-pentanedione occur;
4. Current exposure measurement methods;
5. Current strategies for controlling occupational exposure to diacetyl and 2,3-pentanedione: *e.g.,* engineering controls, work practices, medical surveillance, and personal protective equipment;
6. Oral comments provided to NIOSH on the draft criteria document.

II. Transcripts

Transcripts will be prepared and posted to NIOSH Docket number 245 approximately 30 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted; and (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments. If individuals in making a statement reveal personal information (*e.g.,* medical information) about

themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and if deemed appropriate, will redact such information. Disclosures of information concerning third parties will be redacted.

III. Public Comment Period

Written comments on the document will be accepted until October 14, 2011 in accordance with the instructions below. All material submitted to NIOSH should reference Docket Number NIOSH–245. All electronic comments should be formatted as Microsoft Word or pdf files and make reference to docket number NIOSH–245. To submit comments, please use one of these options:

- Present oral comments at the public meeting and provide a written copy of comments to the NIOSH Docket Office.
- Send NIOSH comments using the online form at *http://www.cdc.gov/niosh/docket/review/docket245/comments.html.*
- Send comments by e-mail to *nioshdocket@cdc.gov?subject=245.*
- *Facsimile:* (513) 533–8285.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34 4676 Columbia Parkway, Cincinnati, Ohio 45226.

All information received in response to this notice will be available for public examination and copying at, NIOSH Docket Office, 4676 Columbia Parkway, Room 111, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH docket home page at *http://www.cdc.gov/niosh/docket/,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

CONTACT PERSON FOR MORE INFORMATION: Lauralynn Taylor McKernan, ScD, CIH, NIOSH, 4676 Columbia Parkway, MS–C32, Cincinnati, OH 45226, telephone (513) 533–8542, fax (513) 533–8230, E-mail *LMcKernan@cdc.gov.*

Dated: July 19, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–18755 Filed 7–22–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Action Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

AGENCY: National Institutes of Health, PHS, Department of Health and Human Services.

ACTION: Proposed Minor Action under the *NIH Guidelines.*

SUMMARY: The Office of Biotechnology Activities (OBA) is updating Appendix B of the *NIH Guidelines* by specifying the risk group (RG) classification for several common attenuated strains of bacteria and viruses that are frequently used in recombinant DNA research. OBA is also adding the risk group for several viruses not previously listed in Appendix B. The *NIH Guidelines* provide guidance to investigators and local Institutional Biosafety Committees (IBCs) for setting containment for recombinant DNA research. Section II–A, Risk Assessment, instructs investigators and IBCs to make an initial risk assessment based on the RG of the agent (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard). The RG of the agent often establishes the minimum containment level required for experiments subject to the *NIH Guidelines.*

The classification of agents into various RG categories is based largely on their ability to cause human disease and the availability of treatments for that disease. For the most part, the organisms listed in Appendix B are wild-type, non-attenuated strains and a distinction is not made between the RG classification for the wild-type organism and a corresponding attenuated strain. A few attenuated strains of organisms are classified in Appendix B at a lower RG than that of the parental organism. However, there are a number of additional, well-established attenuated strains employed in research subject to the *NIH Guidelines* that are not specifically listed and thus by default are included in the same RG as the wild-type organism. Therefore, the biosafety level (BL) specified for research subject to the *NIH Guidelines* may be identical for experimentation with either the attenuated or the wild-type strain. OBA has therefore conducted an evaluation of certain attenuated strains, focusing on those for which a risk assessment had been undertaken and containment recommendations determined in the Centers for Disease Control and Prevention (CDC)/NIH publication *Biosafety in Microbiological and Biomedical Laboratories (BMBL)* (5th edition). Specifying the risk groups for these attenuated strains in Appendix B of the *NIH Guidelines* will lead to more uniform containment recommendations that are commensurate with the biosafety risk. In addition, OBA has identified several RG3 viruses that are not currently specified in Appendix B or are currently specified as a member of a family of viruses otherwise classified as RG2. Therefore, Appendix B is being updated to address these viruses as well.

In addition to considering the risk assessment articulated in the BMBL, OBA also consulted with members of the NIH Recombinant DNA Advisory Committee (RAC) as well as other subject matter experts from NIH, CDC, and academia. Of note, the RAC discussed the appropriate containment for two attenuated strains of *Yersinia pestis* (*lcr*$^{(-)}$ and *pgm*$^{(-)}$ mutants) at its June 16, 2010, meeting when the committee considered which antibiotic markers could be used in these strains without requiring RAC review under Section III–A–1-a. (A webcast of that discussion is available at *http://oba.od.nih.gov/rdna_rac/rac_past_meetings_2010.html.*) The RAC recommendations regarding containment for work with these attenuated strains of *Yersinia pestis* are being implemented by amending Appendix B to indicate that these specific strains are RG2 organisms rather than RG3 organisms.

This update does not include all attenuated strains identified in the BMBL. OBA has tried to select attenuated strains commonly used in recombinant DNA research. OBA has also not modified the RG for viruses for which the *NIH Guidelines* already provides specific containment recommendations. For example, human immunodeficiency virus (HIV) is currently classified as a RG3 virus in Appendix B of the *NIH Guidelines.* However, Section II–A–3 makes specific recommendations regarding when BL2 is acceptable for research with HIV and OBA's guidance titled Biosafety Considerations for Research with Lentiviral Vectors (see *http://oba.od.nih.gov/rdna_rac/rac_guidance_lentivirus.html*) provides additional containment recommendations for lentiviral vectors derived from HIV.

Revision of Appendix B is considered a Minor Action under Section IV–C–3 of the *NIH Guidelines* and therefore can be implemented by OBA after consultation

with the RAC Chair and one or more RAC members as needed. This consultation is complete. However, in the interest of soliciting broad public input, OBA is submitting this action for public comment and will finalize the changes after reviewing any comments.

DATES: The public is encouraged to submit written comments on this minor action. Comments may be submitted to the OBA in paper or electronic form at the OBA mailing, fax, and e-mail addresses shown below under the heading **FOR FURTHER INFORMATION CONTACT**. The NIH will consider all comments submitted by September 9, 2011. All written comments received in response to this notice will be available for public inspection at the NIH OBA office, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20817–7985, weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions, or require additional information about these changes, please contact OBA by e-mail at *oba@od.nih.gov,* telephone (301–496–9838), or mail to the Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892–7985.

Background: Appendix B of the *NIH Guidelines* is a list of biological agents that are classified into risk groups on the basis of their ability to cause disease in healthy adults and the availability of preventive or therapeutic interventions. Agents listed in Appendix B have been classified into one of four risk groups:

- RG1 agents are those that are not associated with disease in healthy adult humans;
- RG2 agents are those that are associated with human disease which is rarely serious and for which preventive or therapeutic interventions are often available;
- RG3 agents are associated with serious or lethal human disease for which preventive or therapeutic interventions may be available; and
- RG4 agents are those that are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not usually available.

For the most part, the agents listed in Appendix B are wild-type, fully pathogenic strains. However, laboratory research that is subject to the *NIH Guidelines* frequently employs strains that are attenuated. An attenuated strain is not necessarily avirulent but generally is less pathogenic than the wild-type strain, and therefore the biosafety risk posed by research with an attenuated strain is not necessarily equivalent to that posed by the wild-type strain. As the RG of an agent is the starting point for the risk assessment to determine containment for research with that agent, OBA is amending Appendix B to provide more specific guidance for these attenuated strains.

In addition to designating RGs for several attenuated strains, four additional changes will be made to Appendix B. The classification of attenuated strains of Vesicular stomatitis virus will be clarified. West Nile Virus (WNV) and Chikungunya virus are currently not specifically listed in the RG classification. WNV will now be listed as a RG3 Flavivirus and Chikungunya virus will be listed as a RG3 Togavirus. In addition, the coronavirus that is the causative agent of severe acute respiratory syndrome (SARS) will be listed as a RG3 coronavirus. All coronaviruses are currently RG2 viruses. The BMBL currently recommends BL3 containment for research with these three viruses.

The following additions will be made to Appendix B–II–A. Risk Group 2 (RG2)—Bacterial Agents Including Chlamydia:

Coxiella burnetii, Nine Mile strain, plaque purified, clone 4

**Francisella tularensis* subspecies *novicida* (also referred to as *Francisella novicida*) strain, Utah112

**Francisella tularensis* subspecies*holartica* LVS

**Francisella tularensis* biovar tularensis strain ATCC 6223 (also known as strain B38)

Yersinia pestis pgm$^{(-)}$ (lacking the 102 kb pigmentation locus)

Yersinia pestis lcr$^{(-)}$ (lacking the LCR plasmid).

The following footnote will be added regarding research with attenuated strains of *Francisella:*

*For research involving high concentrations, BL3 practices should be considered (See Appendix G–II–C–2).

The following changes/additions will be made to Appendix B–II–D (RG2 Viruses) of the *NIH Guidelines:*

Alphaviruses (Togaviruses)—Group A Arboviruses.

''Venezuelan equine encephalomyelitis vaccine strain TC–83'' will be changed to:

Venezuelan equine encephalomyelitis vaccine strains TC–83 and V3526.

The following will be added to Appendix B–II–D:

Alphaviruses (Togaviruses)—Group A Arboviruses.

Add: Chikungunya vaccine strain 181/25.

Arenaviruses.

Add: Junin virus candid #1 vaccine strain.

Flaviviruses (Togaviruses)—Group B Arboviruses.

Add: Japanese encephalitis virus strain SA 14–14–2.

Rhabdoviruses.

''Vesicular stomatitis virus—laboratory adapted strains including VSV–Indiana, San Juan, and Glasgow'' will be changed to:

Vesicular stomatitis virus non-exotic strains: VSV–Indiana 1 serotype strains (e.g. Glasgow, Mudd-Summers, Orsay, San Juan) and VSV–New Jersey serotype strains (e.g. Ogden, Hazelhurst).

The following additions will be made to Appendix B–III–D (RG3 Viruses and Prions) of the *NIH Guidelines:*

Add: Coronaviruses.

Add: SARS-associated coronavirus (SARS–CoV).

Alphaviruses (Togaviruses)—Group A Arboviruses.

Add: Chikungunya.

Flaviviruses (Togaviruses)—Group B Arboviruses.

Add: West Nile Virus (WNV).

Dated: July 18, 2011.

Jacqueline Corrigan-Curay,

Acting Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. 2011–18726 Filed 7–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: The Safe Schools/Healthy Students (SS/HS) Initiative National Evaluation (OMB No. 0930–0297)—Revision

SAMHSA's Center for Mental Health Services (CMHS) will conduct a study to evaluate the relationships between different grantee characteristics and implementation strategies to outcomes at the project, school, and student level. Data collected by this study will facilitate an examination of contextual

factors and inform those who hope to improve the effectiveness of partnerships and implementation efforts under the grant and lead to improved outcomes for communities, schools, and students. The three agencies sponsoring the SS/HS Initiative (the U.S. Department of Health and Human Services, the U.S. Department of Education, and the U.S. Department of Justice) may also choose to incorporate aggregate results from collected data in journal articles, scholarly presentations, and congressional testimony referring to the outcomes of the SS/HS grant program.

Data collection activities involve the administration of four separate surveys (a Baseline Assessment Survey, a Project-Level Survey, a School-Level Survey, and a Staff School Climate Survey) and a Site Visit Protocol for individuals involved with the SS/HS Initiative at the local grantee level. Respondents will submit their responses for all surveys via Qualtrics, a third-party, online Web-based survey platform, except for the Site Visit Protocol, which will be administered on site with grantees.

The estimated burden for data collection is 5,732 hours across a total of 28,125 participants. Using median hourly wage estimates reported by the Bureau of Labor Statistics, May 2009 National Occupational Employment and Wage Estimates, and a loading rate of 25%, the estimated total cost to respondents is $207,343. A breakdown of these estimates is presented in Table 1 below.

TABLE 1—ELEMENTS OF ANNUALIZED HOUR-COST BURDEN OF DATA COLLECTION *

Instrument description	Anticipated number of respondents	Responses per respondent	Average hours per response	Total annual hour burden
Site Visit Protocol	100	1	9	900
Baseline Assessment Survey	25	1	.67	17
Partnership Inventory	400	1	0.25	100
Project-Level Survey	100	1	0.42	42
School-Level Survey	2,300	1	0.45	1,725
Staff School Climate Survey	25,200	1	0.117	2,948
Total	28,125	.....	.....	5,732

* Number of respondents based on an estimated annual average of 100 grantees. Baseline Assessment Survey administered only to grantees in the 2011–2013 cohorts. School-Level Survey estimates based on an average of 23 schools per grant. Staff School Climate Survey estimates based on 252 respondents per grantee. Average hours per response based on previous evaluation and pilot tests.

Written comments and recommendations concerning the proposed information collection should be sent by August 24, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: July 18, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–18759 Filed 7–22–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Assessment of the Underage Drinking Prevention Education Initiatives State/Territory Videos Project—New

The Substance Abuse and Mental Health Services Administration/Center for Substance Abuse Prevention (SAMHSA/CSAP) is requesting Office of Management and Budget (OMB) approval of three new data collection instruments—

- State/Territory Video Contacts Interview Form
- State/Territory Videos Project—Dissemination Update Form
- Video Viewers Feedback Form

This new information collection is for a process assessment of the Underage Drinking Prevention Education Initiatives State/Territory Videos project to be conducted from 2011 through 2014. In 2007, four States participated in a pilot study to produce videos highlighting the underage drinking (UAD) prevention efforts of the States. Based upon the success of those videos in showcasing the States' UAD prevention activities, 10 additional States and 1 Territory were provided funds to produce UAD prevention videos in 2009. SAMHSA/CSAP intends to support the production of the State/Territory UAD prevention videos annually. Therefore, from 2010 through 2013, SAMHSA/CSAP will invite approximately 45 additional States/Territories to produce their own UAD prevention video.

The information collected for the assessment will be used by SAMHSA/CSAP to (1) Ascertain whether the videos produced under the State/Territory Videos project are assisting States and Territories in communicating effectively about their underage drinking prevention initiatives, goals, and objectives; (2) document the dissemination efforts of the videos; and (3) enhance the technical assistance (TA) that is provided by the video production team in producing the videos. This information collection is being implemented under authority of Section 501(d)(4) of the Public Health Service Act (42 U.S.C. 290aa).

There are three phases to the process assessment of the State/Territory Videos project—(1) State/Territory video contacts interviews, (2) dissemination updates, and (3) video viewers feedback.

Phase I—State/Territory Video Contacts Interviews—A member of the assessment team will contact the designated State/Territory point of contact once the video is finalized. The focus of the interview will be around the State's/Territory's experience in producing the UAD prevention video,

the dissemination efforts of the video, and TA received. The interview will be guided by the State/Territory Video Contacts Interview Form. The State/Territory Video Contacts Interview Form includes 31 items, among which are included the following:

- Objectives of the video.
- Targeted audiences of the video.
- Dissemination efforts of the video.
- Identification of how the video increases capacity to communicate about UAD prevention activities.
- Usefulness of the preplanning materials and activities.
- Assessment of the TA received.

By 2014, the State/Territory Video Contacts Interview Form will be completed with approximately 45 State/Territory points of contact for videos produced from 2010 through 2013. It will take an average of 20 minutes (0.333 hours) to read the informed consent statement and complete the interview. This burden estimate is based on interviews that were conducted with the pilot sites in 2007. Only 1 response per respondent is required.

Phase II—Dissemination Updates—At about 6 months after the interview, the State/Territory points of contact will be sent an e-mail from the assessment team detailing the need to update the dissemination efforts of the video for the past 6 months. The email will include a coded link to access the State/Territory Video Project—Dissemination Update Form. The State/Territory Video Project—Dissemination Update Form includes 16 items, among which are included the following:

- Dissemination efforts of the video in the past 6 months.
- Feedback received on the video in the past 6 months.
- Unintended positive outcomes from the video in the past 6 months.
- Assessment of TA received in the past 6 months.

At the end of the form, the contact is thanked and reminded that they will be recontacted in about 6 months to update the dissemination efforts of their State's/Territory's video. Following OMB clearance, an e-mail will be sent to the State/Territory points of contact for videos produced during 2007–2009 noting that OMB clearance has been received for the assessment and asking them to update the dissemination efforts of the video for the past 6 months. These State/Territory points of contact provided initial details of the dissemination activities of their State's/Territory's video to the video production team during the post-production phase of the video. All videos produced under the State/Territory Videos project during 2007–2013 (total of 60) will be assessed in this phase.

The State/Territory Videos Project—Dissemination Update Form will be completed by State/Territory points of contact every 6 months through 2014. A total of 226 updates are expected through 2014. It will take an average of 10 minutes (0.167 hours) to review instructions and complete the online form. The burden estimate is based on comments from several potential respondents who reviewed the form and provided comments on how long it would take them to respond to it. The annualized hour burden is expected to vary because of differences in when the videos were produced and the number of updates that are expected through 2014.

Phase III—Video Viewers Feedback—The purpose of this phase of the assessment is to obtain feedback on the videos to determine if the videos increased community awareness of the UAD prevention efforts of the States/Territories. The Video Viewers Feedback Form will be located on the 'State Videos' page of www.stopalcoholabuse.gov. A link to the feedback form may also be placed on SAMHSA's YouTube channel (if additional clearance is obtained). If States/Territories conduct in-person meetings to showcase the video, they may direct persons to the 'State Videos' page of www.stopalcoholabuse.gov to complete the form or a link to the form will be provided that can be placed on their agency's website. Viewers will be asked to complete 1 feedback form for each video viewed. The Video Viewers Feedback Form includes 16 items, among which are included the following:

- Indication of which video was viewed.
- When and how the video was viewed.
- Indication of increased awareness of the State's/Territory's UAD prevention activities.
- Perception of increased involvement.
- Demographics of the viewers.

This phase will include all videos produced since 2007 (total of 60). It is estimated that by 2014, a total of 12,224.40 viewers will complete the online form, which will take an average of 5 minutes (0.083 hours) to review the informed consent statement, instructions, and complete the form. The average completion time is based on comments from several potential respondents who reviewed the form and provided comments on how long it would take them to respond to it. Viewers of the video are assumed to be persons in the health education field or members of the general public (25 and 75 percent, respectively). The hour burden is expected to vary because of this difference in viewers.

ESTIMATED BURDEN TABLE BY PHASE—ALL FOUR YEARS (2011–2014)

Phases	Number of respondents (production year of video)	Responses per respondent	Total responses	Hours per response	Total hour burden
Phase I—State/Territory Contacts Interviews	45	1	45	0.333	14.99
Phase II—Dissemination Updates	4 (2007)	6	24	0.167	4.01
	11 (2009)	6	66		11.02
	8 (2010)	6	48		8.02
	13 (2011)	4	52		8.68
	12 (2012)	2	24		4.01
	12 (2013)	1	12		2.00
Phase III—Video Viewers Feedback	3,056.10	1	3,056.10	0.083	253.66
	9,168.30	1	9,168.30		760.97
Total-all Phases	12,329.40		12,495.40		1,067.36

ESTIMATED AVERAGED * ANNUALIZED BURDEN TABLE

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
State/Territory Video Contacts Interview Form	15	1	15	0.333	5.00
State/Territory Videos Project—Dissemination Update Form	15	6.25	56.50	0.167	9.44
Video Viewers Feedback Form	764.03	1	764.03	0.083	63.42
	2,292.08	1	2,292.08	0.083	190.24
Total	3,086.11	—	3,127.61	—	268.10

*The numbers reflected in this table are averaged across all 4 years of the assessment, except for the State/Territory Video Contacts Interview Form which is averaged across 3 years. The hours per response rates are actual not average figures. Figures in this table may be off slightly from figures in the Estimated Burden Table by Phase—All Four Years (2011–2014) due to rounding.

Written comments and recommendations concerning the proposed information collection should be sent by August 24, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: July 15, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–18760 Filed 7–22–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2011 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source supplement to the National Center for Child Traumatic Stress.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $1,000,000 (total costs) for up to one year to the National Center for Child Traumatic Stress.

This is not a formal request for applications. Supplement will be provided only to National Center for Child Traumatic Stress based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SM–11–010.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 582 of the Public Health Service Act, as amended.

Justification: Only an application from National Center for Child Traumatic Stress will be considered for funding under this announcement. The National Center for Child Traumatic Stress is the sole entity providing coordination, expertise, training and technical assistance to the National Child Traumatic Stress Network (NCTSN). It is through this Network that the National Center will work to further develop, train, and evaluate screening, assessment and intervention activities and programs that are adapted to fit child welfare and juvenile justice system operation.

The purpose of this 1-year supplement is to promote and facilitate the development of trauma-informed child welfare and juvenile justice service systems. This work will be done in partnership with child welfare and juvenile justice agencies to improve the response of these agencies for children and adolescents in their systems that have experienced significant traumas.

The NCCTS will support Network efforts to further develop, train, and evaluate screening, assessment and intervention activities and programs that are adapted to fit child welfare and juvenile justice system operations. Activities supported by this supplement will build on prior Network activities with grantees who are already engaged in developing trauma-informed awareness and practices in the child welfare and juvenile justice systems.

FOR FURTHER INFORMATION CONTACT: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1095, Rockville, MD 20857; telephone: (240) 276–2321; E-mail: *shelly.hara@samhsa.hhs.gov.*

Janine D. Cook,

SAMHSA.

[FR Doc. 2011–18671 Filed 7–22–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2011 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to the Education Development Resource Center, Inc., Newton, Massachusetts.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $1,000,000 (total costs) per year for up to one year to the Education Development Resource Center, Inc. Newton, Massachusetts. This is not a formal request for applications. Assistance will be provided only to the Education Development Resource Center, Inc. based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SM–11–014.

Catalog Of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 520C of the Public Health Service Act, as amended.

Justification: The purpose of this one-year supplement to the SPRC is to expand and enhance the level of support provided to the National Action Alliance for Suicide Prevention (Action Alliance). This supplement will expand

future organizational development, partnerships, and collaborations to support the implementation of the *National Strategy for Suicide Prevention* (NSSP).

This 1-year funding supports the SPRC and the goals and objectives of the Action Alliance by providing the infrastructure supports to update and advance the NSSP. This will further support national investment in prevention and public health.

Since 2002, the SPRC has provided prevention support, training, and resources to assist organizations and individuals to develop suicide prevention programs, interventions, and policies, to further the work of the Action Alliance and to advance the NSSP. The Action Alliance was launched in September 2010 by Secretary Kathleen Sebelius and Secretary Robert Gates as an innovative public private partnership established to improve public and professional awareness of suicide as a preventable public health problem and to enhance the capacities and capabilities of communities to promote prevention and resilience.

Funding for the SPRC and for this program supplement are components of the Garrett Lee Smith Memorial Act, most recently included in the 2008 Omnibus Appropriations Act. Congress authorized funding for only one Suicide Prevention Resource Center; therefore the program supplement must be awarded to the grantee that manages the SPRC, specifically to Education Development Center, Inc., Newton, Massachusetts. There are no other sources with the available resources and expertise to successfully complete the tasks of this proposal. Further, it would be both inefficient and wasteful to fund a second technical assistance provider for the same group of grantees.

FOR FURTHER INFORMATION CONTACT: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1095, Rockville, MD 20857; telephone: (240) 276–2321; E-mail: *shelly.hara@samhsa.hhs.gov*.

Janine D Cook,

SAMHSA.

[FR Doc. 2011–18670 Filed 7–22–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2011 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Intent to Award a Single Source Grant to Link2Health Solutions, Inc.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $1,705,000 (total costs) for up to one year to Link2Health Solutions, Inc. This is not a formal request for applications. Assistance will be provided only to Link2Health Solutions, Inc based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SM–11–003.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 520(A) of the Public Health Service Act, as amended.

Justification: Only an application from Link2Health Solutions will be considered for funding under this announcement. One-year funding has become available to assist SAMHSA in responding to the growing and pressing need to provide resources for individuals stressed by the nation's current economic crisis. It is considered most cost-effective and efficient to supplement the existing grantee for the National Suicide Prevention Lifeline and to build on the existing capacity and infrastructure within its network of crisis centers.

Link2Health Solutions is in the unique position to carry out the activities of this grant announcement because it is the current recipient of SAMHSA's cooperative agreement to manage the National Suicide Prevention Lifeline. As such, Link2Health Solutions has been maintaining the network communications system and has an existing relationship with the networked crisis centers.

The crisis centers that comprise the National Suicide Prevention Lifeline are a critical part of the nation's mental health safety net. Many crisis centers are experiencing significant increases in calls. The National Suicide Prevention Lifeline crisis centers require assistance to continue to play their critical role in providing support as well as emergency services to suicidal callers during these challenging economic times. In addition, the National Suicide Prevention Lifeline crisis centers are community resources that need to be utilized to reach out to those in their communities most at risk, including those currently impacted severely by the economy.

FOR FURTHER INFORMATION CONTACT: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1095, Rockville, MD 20857; *telephone:* (240) 276–2321; *e-mail: shelly.hara@samhsa.hhs.gov.*

Janine D. Cook,

Chemist, Division of Workplace Programs, SAMHSA.

[FR Doc. 2011–18669 Filed 7–22–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3322–EM; Docket ID FEMA–2011–0001]

Louisiana; Amendment No. 3 to Notice of an Emergency Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3322–EM), dated May 6, 2011, and related determinations.

DATES: *Effective Date:* July 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective July 7, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18743 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1999–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1999–DR), dated July 1, 2011, and related determinations.

DATES: *Effective Date:* July 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 1, 2011.

All counties in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18741 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1983–DR; Docket ID FEMA–2011–0001]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1983–DR), dated May 11, 2011, and related determinations.

DATES: *Effective Date:* July 12, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 11, 2011.

Adams, Bolivar, Claiborne, Coahoma, Humphreys, Issaquena, Jefferson, Sharkey, Tunica, Warren, Washington, Wilkinson, and Yazoo Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18734 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1989–DR; Docket ID FEMA–2011–0001]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1989–DR), dated June 6, 2011, and related determinations.

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 6, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 22–25, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Canadian, Delaware, Grady, Kingfisher, Logan, and McClain Counties for Individual Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18646 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1995–DR; Docket ID FEMA–2011–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1995–DR), dated June 15, 2011, and related determinations.

DATES: *Effective Date:* June 15, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 15, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from severe storms and flooding during the period of April 23 to May 9, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Addison, Chittenden, Essex, Franklin, Grand Isle, Lamoille, and Orleans Counties for Individual Assistance.

Addison, Chittenden, Essex, Franklin, Grand Isle, Lamoille, and Orleans Counties for Public Assistance, including direct Federal assistance under the Public Assistance program.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18644 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1994–DR; Docket ID FEMA–2011–0001]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–1994–DR), dated June 15, 2011, and related determinations.

DATES: *Effective Date:* June 15, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 15, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from severe storms

and tornadoes on June 1, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Hampden and Worcester Counties for Individual Assistance.

Hampden County for Public Assistance.

All counties within the Commonwealth of Massachusetts are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18642 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1993–DR; Docket ID FEMA–2011–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1993–DR), dated June 10, 2011, and related determinations.

DATES: *Effective Date:* June 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 10, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms, flooding, tornadoes, and straight-line winds during the period of April 26 to May 8, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John Long, of FEMA, is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Allegany, Broome, Chemung, Chenango, Clinton, Delaware, Essex, Franklin, Hamilton, Herkimer, Lewis, Madison, Niagara, Oneida, Onondaga, Ontario, Steuben, Tioga, Ulster, Warren, and Yates Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18628 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1992–DR] Docket ID FEMA–2011–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1992–DR), dated June 10, 2011, and related determinations.

DATES: *Effective Date:* June 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 10, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from an ice jam and flooding during the period of May 8–13, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The Alaska Native Villages of Crooked Creek and Red Devil in the Kuspuk Regional Educational Attendance Area (REAA) for Public Assistance.

All boroughs and REAAs within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18626 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1991–DR; Docket ID FEMA–2011–0001]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1991–DR), dated June 7, 2011, and related determinations.

DATES: *Effective Date:* June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 7, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms occurring on April 19, 2011, and April 22 to May 2, 2011, and flooding resulting from those storms beginning on April 19, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

Alexander, Franklin, Gallatin, Hardin, Jackson, Lawrence, Massac, Perry, Pope, Pulaski, Randolph, Saline, White, and Williamson Counties for Individual Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

[FR Doc. 2011–18624 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1990–DR; Docket ID FEMA–2011–0001]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1990–DR), dated June 7, 2011, and related determinations.

DATES: *Effective Date:* June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 7, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms and tornadoes during the period of May 21–22, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance, including direct Federal assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Paul J. Ricciuti, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Anoka and Hennepin Counties for Public Assistance, including direct Federal assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18623 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Arrival and Departure Record (Forms I–94 and I–94W) and Electronic System for Travel Authorization

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 30-day notice and request for comments; Revision of an existing information collection: 1651–0111.

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: CBP Form I–94 (Arrival/Departure Record), CBP Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). CBP is proposing that this information collection be revised by adding a data element for ''Country of Birth'' to ESTA and to CBP Form I–94W. 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 28239) on May 16, 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 August 24, 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: Arrival/Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, and Electronic System for Travel Authorization (ESTA).

OMB Number: 1651–0111.

Form Numbers: CBP Form I–94 and CBP Form I–94W.

Abstract: CBP Form I–94 (Arrival/Departure Record) and CBP Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure) are used to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, and contact information. The data elements collected on these forms enable the DHS to perform its mission related to the screening of alien visitors for potential risks to national security, and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to

CBP before embarking on travel to the United States. CBP proposes to revise this collection of information by adding a data field for ''Country of Birth'' to ESTA and to CBP Form I–94W.

ESTA can be accessed at *http://www.cbp.gov/xp/cgov/travel/id_visa/esta/.* Samples of CBP Forms I–94 and I–94W can be viewed at *http://www.cbp.gov/linkhandler/cgov/toolbox/forms/arrival.ctt/arrival.pdf* and *http://www.cbp.gov/linkhandler/cgov/toolbox/forms/visa_waiver.ctt/visa_waiver.pdf.*

Current Actions: This submission is being made to revise this collection of information by adding a data field for ''Country of Birth'' to ESTA and to CBP Form I–94W, with no change to the burden hours. There are no proposed changes to CBP Form I–94.

Type of Review: Revision.

Affected Public: Individuals, Carriers, and the Travel and Tourism Industry.

I–94 (Arrival and Departure Record):

Estimated Number of Respondents: 14,000,000.

Estimated Number of Total Annual Responses: 14,000,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 1,862,000.

Estimated Total Annualized Cost on the Public: $84,000,000.

I–94W (Nonimmigrant Visa Waiver Arrival/Departure):

Estimated Number of Respondents: 100,000.

Estimated Number of Total Annual Responses: 100,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 13,300.

Estimated Total Annualized Cost on the Public: $600,000.

Electronic System for Travel Authorization (ESTA):

Estimated Number of Respondents: 18,900,000.

Estimated Number of Total Annual Responses: 18,900,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 4,725,000.

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: July 18, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–18528 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

Agency Information Collection Activities: Drawback Process Regulations

AGENCY: Department of Homeland Security, U.S. Customs and Border Protection.

ACTION: 30-Day Notice and Request for Comments; Extension of an Existing Information Collection: 1651–0075.

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: Drawback Process Regulations (CBP Forms 7551, 7552 and 7553). 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 19120) on April 6, 2011, allowing for a 60-day comment period. One comment was received. 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 August 24, 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: Drawback Process Regulations.

OMB Number: 1651–0075.

Form Number: CBP Forms 7551, 7552 and 7553.

Abstract: The collections of information related to the drawback process are required to implement provisions of 19 CFR, part 191, which provides for a refund of duty for certain merchandise that is imported into the United States and subsequently exported. If the requirements set forth in part 191 are met, claimants may file for a refund of duties using CBP Form 7551, *Drawback Entry*. CBP Form 7552, *Delivery Certificate for Purposes of Drawback,* is used to record a transfer of merchandise from a company other than the importer of record and is also used each time a change to the imported merchandise occurs as a result of a manufacturing operation. CBP Form 7553, *Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback,* is used to notify CBP if an exportation, destruction, or return of the imported merchandise will take place. The information collected on these forms is authorized by 19 U.S.C. 1313(l). The drawback forms are accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Current Action: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 7551, Drawback Entry

Estimated Number of Respondents: 6,000.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 120,000.

Estimated Time per Response: 35 minutes.

Estimated Total Annual Burden Hours: 70,000.

CBP Form 7552, Delivery Certificate for Drawback

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 40,000.

Estimated Time per Response: 33 minutes.

Estimated Total Annual Burden Hours: 22,000.

CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 3,000.

Estimated Total Annual Burden Hours: 1,650.

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: July 19, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–18652 Filed 7–22–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: 1090–0008, American Customer Satisfaction Index (ACSI) E–Government Website Customer Satisfaction Survey

AGENCY: National Business Center, Federal Consulting Group, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Interior, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Interior is soliciting comments concerning the American Customer Satisfaction Index (ACSI) E–Government Website Customer Satisfaction Survey used by numerous Federal agencies to continuously assess and improve their Web sites.

DATES: Consideration will be given to all comments received by September 23, 2011.

ADDRESSES: Written comments may be submitted to the Federal Consulting Group, Attention: Rick Tate, 1849 C St, NW. MS 314, Washington, DC 20240–0001. Comments may also be sent by facsimile to (202) 513–7686, or via e-mail to *Richard_Tate@nbc.gov.* Individuals providing comments should reference Website Customer Satisfaction Surveys.

FOR FURTHER INFORMATION CONTACT: To request additional information or copies of the form(s) and instructions, please write to the Federal Consulting Group, Attention: Rick Tate, 1849 C St, NW. MS 314, Washington, DC 20240–0001, or call him on (202) 513–7655, or send an e-mail to *Richard_Tate@nbc.gov*.

SUPPLEMENTARY INFORMATION:

Title: American Customer Satisfaction Index (ACSI) E–Government Website Customer Satisfaction Survey.

OMB Control Number: 1090–0008.

Abstract: The proposed renewal of this information collection activity provides a means to consistently assess, benchmark and improve customer satisfaction with Federal government agency websites within the Executive Branch. The Federal Consulting Group of the Department of the Interior serves as the executive agent for this methodology and has partnered with ForeSee Results, Inc., to offer this assessment to Federal government agencies.

ForeSee Results is a leader in customer satisfaction and customer experience management on the web. It utilizes the methodology of the most respected, credible, and well-known measure of customer satisfaction in the country, the American Customer Satisfaction Index (ACSI). This methodology combines survey data and a patented econometric model to precisely measure the customer satisfaction of website users, identify specific areas for improvement and determine the impact of those improvements on customer satisfaction and future customer behaviors.

The ACSI is the only cross-agency methodology for obtaining comparable measures of customer satisfaction with Federal government programs and/or websites. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to American citizens, including those from the Federal government.

The ACSI E–Government Website Customer Satisfaction Surveys will be completed subject to the Privacy Act of 1974, Public Law 93–579, December 31, 1974 (5 U.S.C. 522a). The agency information collection will be used solely for the purpose of the survey. The contractor will not be authorized to release any agency information obtained through surveys without first obtaining permission from the Federal Consulting Group and the participating agency. In no case will any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data. In addition, participating Federal agencies may only provide information sufficient to randomly select website visitors as potential survey respondents.

There is no other agency or organization able to provide the information that is accessible through the surveying approach used in this information collection. Further, the information will enable Federal agencies to determine customer satisfaction metrics with discrimination capability across variables. Thus, this information collection will assist Federal agencies in improving their customer service in a targeted manner which will make best use of resources to improve service to the public.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Proposed renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

Estimated Number of Respondents: Participation by Federal agencies in the ACSI is expected to vary as agency websites are added or deleted. However, based on historical records, projected average estimates for the next three years are as follows:

Average Expected Annual Number of Customer Satisfaction Surveys: 275.

Respondents: 1,375,000.

Annual responses: 1,375,000.

Frequency of Response: Once per survey.

Average minutes per response: 2.5.

Burden hours: 57,292 hours.

Note: it is expected that the first year there will be approximately 225 surveys submitted, the second year 275 surveys submitted, and the third year 325 surveys submitted due to expected growth in the program. The figures above represent an expected average per year over the three-year period.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection by appointment with the Federal Consulting Group at the contact information given in the **ADDRESSES** section. The comments, with names and addresses, will be available for public view during regular business hours. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law.

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: July 19, 2011.

Ronald M. Oberbillig,

Chief Operating Officer, Federal Consulting Group.

[FR Doc. 2011–18710 Filed 7–22–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N154;96300–1671–0000–P5]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Applications for Permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before August 24, 2011. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by August 24, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18, require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a

hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Richard Lawler, James Madison University, Weyers Cave, VA; PRT–43065A.

The applicant requests a permit to import biological samples from white sifaka (*Propithecus verreauxi*), collected in the wild in Madagascar, for the purpose of scientific research.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Ronald Hughes, Nunica, MI; PRT–37679A.

Applicant: Kendall Kilbourne, East Bernstadt, KY; PRT–46824A.

Applicant: James Block; Maple Grove, MN; PRT–47120A.

Applicant: James Masten, Houston, TX; PRT–46434A.

Applicant: James Brookshire, Friendswood, TX; PRT–47147A.

Applicant: Connor Garrison, Plano, TX; PRT–47145A.

B. Endangered Marine Mammals and Marine Mammals

Applicant: University of Florida, College of Veterinary Medicine, Gainesville, FL; PRT–42872A.

The applicant requests a permit to import biological samples taken from West Indian manatees (*Trichechus manatus*) which are being captive held or are captive born in Dolphin Discovery, Quintana Roo, Mexico, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–18655 Filed 7–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N153; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); DMAFR@fws.gov (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
28080A	St. John Fisher College	76 FR 12990; March 9, 2011	June 16, 2011.
38879A	Scott Ackleson	76 FR 27660; May 12, 2011	June 17, 2011.
44242A	Larry Hildreth	76 FR 32223; June 3, 2011	July 05, 2011.
43070A	Keith Jefferson	76 FR 32223; June 3, 2011	July 12, 2011.

Marine Mammals

The permit listed below was issued prior to the close of the **Federal Register** comment period as per the Marine Mammal Protection Act, Section 104(c)(3)(A), due to loss of unique research opportunity. The permit will be valid for 1 year, and we will consider any comments submitted prior to the close of the comment period on July 25, 2011.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
039386	U.S. Fish and Wildlife Service, Marine Mammals Management.	76 FR 36934; June 23, 2011	July 15, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–18656 Filed 7–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[USGS–GX11EE000101000]

Agency Information Collection Activities: Comment Request for National Spatial Data Infrastructure, Cooperative Agreements Program (NSDI CAP)

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection (1028–0084).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we (the U.S. Geological Survey) are notifying the public that we will submit to OMB an extension of a currently approved information collection (IC) for the *National Spatial Data Infrastructure, Cooperative Agreements Program (NSDI CAP).* This notice provides the public and other Federal agencies an opportunity to comment on the paperwork burden of this information collection (IC). The existing IC is scheduled to expire on January 31, 2012. To submit a proposal for the NSDI CAP three standard OMB forms and project narrative must be completed and submitted via Grants.gov.

DATES: To ensure that your comments on this IC are considered, please submit them on or before September 23, 2011.

ADDRESSES: Please also submit a copy of your written comments to USGS Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 807, Reston, VA 20192 (mail); 703–648–7197 (phone); 703–648–6853 (fax); or *cbartlett@usgs.gov* (e-mail). Please reference Information Collection 1028–0084 NSDI CAP in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, please contact USGS, Brigitta Urban-Mathieux U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 590, Reston, Virginia 20192 (mail); by telephone (703) 648–5175; or *burbanma@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents are submitting proposals to acquire funding for projects to help build the infrastructure necessary for the geospatial data community to effectively discover, access, share, manage, and use digital geographic data. The NSDI consists of the technologies, policies, organizations, and people necessary to promote cost-effective production, and the ready availability and greater utilization of geospatial data among a variety of sectors, disciplines, and communities. Specific NSDI areas of emphasis include: metadata documentation, clearinghouse establishment, framework development, standards implementation, and building organizational collaboration and cooperation among organizations to leverage of geospatial resources.

We will protect information 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.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

II. Data

OMB Control Number: 1028–0084.

Title: National Spatial Data Infrastructure Cooperative Agreements Program (NSDI CAP).

Type of Request: Notice of an extension of a currently approved information collection.

Affected Public: Private Sector; State, Local, and Tribal governments; Academia, and Non-profit organizations.

Respondent's Obligation: Voluntary (necessary to receive benefits).

Frequency of Collection: On occasion.

Estimated Annual Number of Respondents: 60.

Estimated Total Annual Responses: 60.

Estimated Time per Response: 25 hours.

Estimated Total Annual Burden Hours: 1,500 hours.

III. Request for Comments

We invite comments concerning this IC on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that any comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publically available at anytime. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that will be done.

Dated: July 19, 2011.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee, Core Science Systems.

[FR Doc. 2011–18609 Filed 7–22–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DP0000]

Notice of Resource Advisory Council Meetings for the Dominguez-Escalante Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante Advisory Council (Council) will meet as indicated below.

DATES: Meetings will be held: September 7 and 21, 2011; October 5, 2011; November 2, 2011; December 7, 2011; January 4, 2012; February 1, 2012; and March 7, 2012. All meetings will begin at 3 p.m. and will adjourn at 6 p.m.

ADDRESSES: Meetings on September 7, October 5, December 7 and February 1 will be held at the Delta Performing Arts Center, 822 Grand Ave., Delta, Colorado. Meetings on September 21, November 2, January 4 and March 7 will be held at the Mesa County Courthouse Annex, Training Room A, 544 Rood, Grand Junction, Colorado.

FOR FURTHER INFORMATION CONTACT: Katie Stevens, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. *e-mail: kasteven@blm.gov.*

SUPPLEMENTARY INFORMATION: The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the resource management planning process for the Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness. Topics of discussion during the meeting may include informational presentations from various resource specialists working on the resource management plan, as well as Council reports relating to the following topics: Recreation, fire management, land-use planning process, invasive species management, travel management, wilderness, land exchange criteria, cultural resource management, and other resource management topics of interest to the Council raised during the planning process.

These meetings are anticipated to occur monthly, and may occur as frequently as every two weeks during intensive phases of the planning process. Dates, times and agendas for additional meetings may be determined at future Advisory Council Meetings, and will be published in the **Federal Register,** announced through local media and on the BLM's Web site for the Dominguez-Escalante planning effort, *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

These meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have time allocated at the beginning and end of each meeting for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited at the discretion of the chair.

Helen M. Hankins,

State Director.

[FR Doc. 2011–18773 Filed 7–22–11; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000.L10200000.XZ0000]

Notice of Public Meeting Cancellation: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council Meeting is cancelled.

DATES: The meeting was originally scheduled for Thursday and Friday, August 11 and 12, 2011, at the Bureau of Land Management Ukiah Field Office, 2550 North State Street, Ukiah, California. A new meeting date will be announced later.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 221–1743; or Joseph J. Fontana, public affairs officer, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: July 15, 2011.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2011–18774 Filed 7–22–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000.L14300000.FR0000; NVN088155 and NVN088157; 11–08807; MO #4500020758; TAS: 14X1109]

Notice of Realty Action: Competitive Sale of Public Land in Carson City, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell two parcels of public lands totaling approximately 10 acres located in the BLM Carson City District in Carson City, Nevada. The sales will be conducted as a competitive bid auction in which interested bidders must submit written sealed bids equal to, or greater than, the appraised fair market value of the lands.

DATES: Interested parties may submit written comments regarding the proposed sales to the BLM on or before September 8, 2011. The deadline for submission of sealed bids will be announced on the BLM Carson City District Web site: *http://www.blm.gov/nv/st/en/fo/carson_city_field.html* at least 30 days prior to the sale date.

ADDRESSES: Mail written comments to the BLM Field Manager, Sierra Front Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Sealed bids must also be submitted to this address.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Realty Specialist, BLM Sierra Front Field Office at e-mail: *Jo_Hufnagle@blm.gov* or phone: (775) 885–6144. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The competitive sales will be conducted pursuant to Section 2601(d) of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11). Two parcels of public land are proposed for competitive sale in Carson City, Nevada. One parcel, identified as the South Edmonds Parcel, is on South Edmonds Street in a residential area near Prison Hill surrounded by private land. The other parcel, identified as Parcel 1A, is in the southwestern portion of the city in the vicinity of the junction of U.S. Highway 50 West and U.S. 395. This parcel includes portions of U.S Highway

50 West and is located behind a Costco store in a commercial business area. The lands proposed for sale are legally described as:

Mount Diablo Meridian

Sale 1—South Edmonds Parcel

T. 15 N., R. 20 E.,
Sec. 33, lot 20.

The area described contains 2.51 acres, more or less, in Carson City Consolidated Municipality, Nevada.

The South Edmonds parcel is proposed for sale at the appraised fair market value of $180,000.

Sale 2—Parcel 1A

T. 15 N., R. 20 E.,
Sec. 31, NE¼SE¼NW¼SE¼, SW¼SE¼NW¼SE¼, and SE¼SE¼NW¼SE¼.

The area described contains 7.5 acres, more or less, in Carson City Consolidated Municipality, Nevada.

Parcel 1A is proposed for sale at the appraised fair market value of $50,000. Administrative jurisdiction of the land within Parcel 1A was transferred from the U.S. Forest Service to the BLM as part of the Omnibus Public Land Management Act of 2009.

The sales will be subject to Section 203(d) and (f) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713(d)(f) and 1719, respectively, and any applicable BLM land sale and mineral conveyance regulations at 43 CFR Part 2710. More detailed information regarding the proposed sales, including maps and current appraisals, may be reviewed during normal business hours at the BLM Sierra Front Field Office at the address listed above.

Certain public lands in Carson City, Nevada, were identified for disposal by sale to qualified bidders in Section 2601 of the Omnibus Public Land Management Act of 2009 (Act). The Act also withdrew the specified public lands from all forms of entry and appropriation under the public land laws, excepting sale consistent with the Act; the location, entry and patent under the mining laws; and the mineral leasing and geothermal leasing laws. In accordance with Section 2601(e) of the Act, 5 percent of the proceeds from the sales will be paid directly to the State for use in the general education program of the State and the remainder will be deposited in the ''Carson City Special Account'' and will be available to: (i) Reimburse costs incurred by the BLM for preparing for the sale of other public lands identified in subsection (d)(2); (ii) reimburse costs incurred by the BLM and the U.S. Forest Service for carrying out transfers of land to be held in trust by the United States under subsection (h)(1); and (iii) acquire environmentally sensitive land or an interest in environmentally sensitive land in Carson City.

The BLM issued the Carson City Lands Sales Final Environmental Assessment Finding of No Significant Impact and Decision Record on November 18, 2010.

Until completion of the sale, the BLM will no longer accept applications for new land use authorizations on the identified public lands. Patents or other conveyance documents will contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. A condition that the conveyance be subject to valid existing rights;

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands; and

4. A reservation of all minerals to the United States together with the right to explore, prospect for, mine, and remove them under applicable law and such regulations as the Secretary may prescribe.

In addition the parcels will be subject to the following encumbrances of record:

Sale 1—South Edmonds Parcel is encumbered by:

Right-of-way NVN 0060169 for gas pipeline purposes granted to Paiute Pipeline Company, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185, sec. 28);

Right-of-way NVN 035560 for road and utility purposes granted to Carson City, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

Right-of-way NVN 047782 for communication line purposes granted to Nevada Bell, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

Right-of-way NVN 048336 for power line purposes granted to Sierra Pacific Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

Right-of-way NVN 080640 for sewer line purposes granted to Carson City, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Sale 2—Parcel 1A is encumbered by:

Rights-of-way NVN 0041036 and NVN 0043433 for highway purposes granted to the Nevada Department of Transportation, its successors or assigns, pursuant to the Act of November 9, 1921 (42 Stat. 0216);

Right-of-way NVN 0012729 for highway material site purposes granted to the Nevada Department of Transportation, its successors or assigns, pursuant to the Act of August 27, 1958 (23 U.S.C. 317(A)); and

Right-of-way NVN 087757 for drainage facility purposes granted to Carson City, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

The BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to a new term, including perpetuity, if applicable, or to an easement prior to conveyance.

Detailed bid requirements, including the deadline for submission of bids, will be announced on the BLM Carson City District Web site: *http://www.blm.gov/nv/st/en/fo/carson_city_field.html* at least 30 days prior to the sale date.

Sealed bids must be for not less than the appraised fair market value. Each sealed bid must include a certified check, money order, bank draft, or cashier's check made payable in U.S. currency to ''Department of the Interior—Bureau of Land Management'' for not less than 10 percent of the amount of the bid and must be enclosed in a sealed envelope with the name of the sale parcel (either ''Sale 1—South Edmonds Parcel'' or ''Sale 2—Parcel 1A'') written on the lower front left-hand corner of the envelope.

The highest qualifying bidder for each sale parcel will be declared the high bidder and will receive written notice. Bidders submitting matching high bid amounts will be provided an opportunity to submit supplemental bids. The BLM Sierra Front Field Office Manager will determine the method of supplemental bidding, which may be by oral auction or additional sealed bids. The high bidder must submit the remainder of the full bid price in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. currency to the ''Department of the Interior—Bureau of Land Management'' prior to expiration of 180 days from the day of sale. Personal checks will not be accepted. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid. Failure to pay the full price prior to the expiration of the 180th day following the day of sale will cause the entire 10 percent bid deposit to be forfeited to the BLM. In accordance with 43 CFR 2711.3–1(f), the BLM may accept or

reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons. If not sold, the lands described in this notice may be identified for sale at a later date without further legal notice.

Federal law requires that bidders must be (1) United States citizens 18 years of age or older; (2) a corporation subject to the laws of any State or of the United States; (3) an entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) a State, State instrumentality, or political subdivision authorized to hold real property. U.S. citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. In addition, the Act requires that bidders must be certified by Carson City Consolidated Municipality, Nevada, that they have agreed to comply with city zoning ordinances and any master plan for the area approved by the City.

In order to determine the appraised value of the lands proposed for sale, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, or local government laws, regulations, or policies that may affect the subject lands or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Any lands lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Only written comments will be considered properly filed. Before including your address, phone number, e-mail address, or other personal identifying information in your comment—you should be aware that your entire comment, including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the proposed sales will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR Part 2711.

Linda J. Kelly,

Manager, Sierra Front Field Office.

[FR Doc. 2011–18632 Filed 7–22–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior Department.

ACTION: Notice and request for comments for 1029–0040.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for the requirements for permits for special categories of mining.

DATES: Comments on the proposed information collection activities must be received by September 23, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783 or by e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies the information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR part 785—Requirements for permits for special categories of mining. OSM will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for Part 785 is 1029–0040. Responses are required to obtain a benefit.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 785—Requirements for permits for special categories of mining.

OMB Control Number: 1029–0040.

Summary: The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of Public Law 95–87, which require applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if

the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coalmine permits and State Regulatory Authorities.

Total Annual Responses: 195 permit applicants and 192 State regulatory authorities.

Total Annual Burden Hours: 24,442.

Total Annual Non-Wage Costs: $0.

Dated: July 13, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–18214 Filed 7–22–11; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–020]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 27, 2011 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 731–TA–457–A–D (Third Review)(Heavy Forged Hand Tools from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before August 10, 2011.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 20, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–18859 Filed 7–21–11; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Northstar Materials, Inc.* (*d/b/a Knife River Materials) & Knife River Corporation,* Civil No. 0:11–cv–01950–RHK–LIB, was lodged with the United States District Court for the District of Minnesota on July 18, 2011.

This proposed Consent Decree concerns a complaint filed by the United States against Defendants, pursuant to Sections 301, 309 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1319 and 1344 to obtain injunctive relief and impose civil penalties against the Defendants for violating the Clean Water Act by discharging fill material into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and/or perform mitigation and to pay a civil penalty. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Ana H. Voss, Assistant United States Attorney, United States Attorney's Office, District of Minnesota, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415 and refer to U.S.A.O. file number 2010v00217 and DJ #90–5–1–1–18739.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the District of Minnesota, 300 South Fourth Street, Suite 202, Minneapolis, Minnesota 55415. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2011–18659 Filed 7–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 16, 2011, American Radiolabeled Chemicals, Inc., 101 Arc Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in schedule II.

The company plans to manufacture small quantities of the listed controlled substance as radiolabeled compounds for biochemical research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 23, 2011.

Dated: July 19, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–18752 Filed 7–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 13, 2011, and published in the **Federal Register** on April 20, 2011, 76 FR 22146, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4485, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time.

DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. § 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 19, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–18750 Filed 7–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2011, and published in the **Federal Register** on April 19, 2011, 76 FR 21916, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 4–Anilino-N-Phenethyl-4-Piperidine (8333), a basic class of controlled substance listed in schedule II.

The company plans to use this controlled substance in the manufacture of another controlled substance.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Mallinckrodt, Inc., to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Mallinckrodt, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: July 19, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–18751 Filed 7–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–51]

Paul Weir Battershell, N.P.; Suspension Of Registration

On May 8, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Paul Weir Battershell, N.P. (''Respondent''), of Caldwell and Meridian, Idaho. The Show Cause Order proposed the revocation of Respondent's DEA Certificates of Registration MB1090670 (for his Caldwell registered location) and MB1294711 (for his Meridian registered location), and the denial of any pending applications to renew or modify either registration, on the ground that his ''continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f).'' ALJ Ex. 1, at 1.

The Show Cause Order specifically alleged that from ''July 2005 through at least August 2006,'' Respondent ''prescribed and dispensed Human Growth Hormone and controlled substances, including anabolic steroids, to individuals for no legitimate medical purpose and outside the course of professional practice'' in violation of 21 U.S.C. §§ 333(e) and 841(a)(1), as well as 21 CFR 1306.04(a). *Id.* at 1.

The Order further alleged that from September 2005 through August 2006, Respondent ''failed to maintain proper security over [his] controlled substances by not maintaining a proper key control system, failing to maintain adequate supervision over fellow employees who handle[d] [his] controlled substances and failing to monitor the distribution of [his] controlled substances in violation of 21 CFR 1301.71.'' *Id.* The Order also alleged that ''[i]n August 2005,'' Respondent ''failed to record the transfer of another practitioner's controlled substances into [his] inventory, when that practitioner left the clinic where [Respondent] was employed,'' *id.* at 2 (citing 21 U.S.C. § 827(a)(3) and 21 CFR 1304.21); that ''[i]n November and December 2005,'' he ''failed to keep records of controlled substances [he] received, specifically Phentermine 30 mg''; and that ''during calendar year 2005,'' Respondent further ''failed to properly record the date on [his] dispensing records.'' *Id.* (citing 21 U.S.C. § 827(a)(3) and 21 CFR 1304.21 & 1304.22).

Finally, the Show Cause Order alleged that ''[d]uring 2005 and 2006,'' Respondent ''accepted controlled substances from non-DEA registered sources (patients) in violation of 21 U.S.C. § 844(a) and redistributed those illicitly obtained controlled substances to other patients in violation of 21 U.S.C. § 841(a)(1).'' *Id.*

On June 5, 2009, counsel for Respondent timely requested a hearing, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJs). ALJ Ex. 2. Following pre-hearing procedures, an ALJ conducted a hearing in Boise, Idaho on December 1–2, 2009. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Following the hearing, both parties submitted post-hearing briefs.

On April 9, 2010, the ALJ issued her Recommended Decision (also ALJ). Therein, the ALJ, after considering the five public interest factors, *see* 21 U.S.C. § 823(f), recommended that Respondent be granted a restricted registration and be admonished.

As to the first factor—the recommendation of the appropriate state licensing board—the ALJ found that while the Idaho Board of Pharmacy (Board) had previously placed Respondent on probation, there was ''no pending action[] against'' him and ''the Board has made no recommendations with regards to his registration.'' ALJ at 34. As to the second factor—Respondent's experience in dispensing controlled substances—the ALJ found that ''Respondent's actions as well as his own statements suggest that at the time of these infractions in 2006, [Respondent] was inexperienced, or at least unaware of numerous regulations relating to the security and inventory requirements for controlled substances under the [Controlled Substances Act].'' *Id.* at 34–35. She further found that while Respondent claimed that he had ''sought guidance but did not receive it * * * in some instances, when [he] did receive such guidance, he was still unable to follow it.'' *Id.* at 35. The ALJ thus concluded that ''the record demonstrates that [Respondent's] past practices demonstrate a lack of knowledgeable experience in handling controlled substances.'' *Id.*

As to factor three—Respondent's conviction record for offenses related to the distribution or dispensing of controlled substances—the ALJ found that the ''record contains no evidence of any convictions related to the handling of controlled substances.'' *Id.* The ALJ thus concluded that ''this factor does not fall in favor of revocation.'' *Id.*

With respect to the fourth factor—Respondent's compliance with applicable State, Federal or local laws related to controlled substances—the

ALJ found that Respondent had violated numerous security and record-keeping provisions of the Controlled Substances Act (CSA). These included: (1) His failure to maintain a ''proper key control system to secure his controlled substances at either clinic''; (2) his receiving controlled substances from patients which were re-dispensed to other patients, in violation of 21 CFR 1304.21(a) and 1307.12(a); (3) his failure to take an initial inventory and biennial inventories, in violation of 21 U.S.C. § 827(a)(1) and 21 CFR 1304.11(b)–(c); (4) his failure to keep controlled substance dispensing records separate from records of other products his employer sold, as well as his failure to maintain those records in a form that makes them readily retrievable, in violation of 21 U.S.C. §§ 827(a)(3) and 842(a)(5), as well as 21 CFR 1304.03(d), 1304.04(a), (f)(2), (g), and 1304.21(a); (5) his failure to maintain complete and accurate records of controlled substances which the clinic had ordered, in violation of 21 U.S.C. § 827(a)(3), 21 CFR 1304.03(d), 1304.04(a), 1304.21(a), as well as Idaho Code Ann. § 37–2720; (6) his failure to maintain invoices for controlled substances received, in violation of 21 CFR 1304.22(c); and (7) his maintaining of unlabeled prescription bottles inside his controlled substances cabinet, in violation of 21 CFR 1302.03(a) and Idaho Admin. Code § 27.01.364.02. ALJ at 35–39. In addition, the ALJ noted that Respondent violated Idaho law in that he ordered controlled substances from suppliers not registered or licensed in Idaho. *Id.* at 39 (citing Idaho Code Ann. § 37–2716).

Next, the ALJ discussed the evidence supporting the Government's allegation that Respondent had prescribed steroids to K.L., his employer, for muscle enhancement purposes, and that he did so without conducting an initial physical examination and without a legitimate medical purpose. ALJ at 40–41. Noting that ''neither party introduced any patient records as evidence, nor introduced an independent expert medical opinion to substantiate their position[],'' the ALJ drew ''no legal conclusions concerning the issue of whether or not [Respondent] dispensed controlled substances for a legitimate medical purpose.'' *Id.* at 41. However, she concluded under factor four that the ''security and record-keeping violations weigh heavily against * * * Respondent's continued registration.'' *Id.*

Under the fifth factor—such other conduct which may threaten public health and safety—the ALJ concluded that ''it appears Respondent violated Federal law,'' specifically, subsection 303(e) of the Food, Drug, and Cosmetic Act (''FDCA''), 21 U.S.C. § 333(e), because he is not a physician and dispensed Human Growth Hormone (HGH). ALJ at 44. While the ALJ noted that HGH is not a controlled substance under the CSA, she noted that the ''plain language of 21 U.S.C. § 333(e) states that distribution of [HGH] is illegal unless pursuant to the order of a physician,'' *id.* at 44, and that ''violations of Federal law in distributing this drug are relevant in assessing whether * * * Respondent would comply with the'' CSA. *Id.* at 41 (citing *Wonderyears, Inc.,* 74 FR 457, 458 (2009)). *See also id.* at 45.

The ALJ then discussed those facts she deemed favorable to Respondent in determining the appropriate sanction. These included that when Respondent ''was informed'' that it was illegal for him to prescribe HGH, he ''ceased handling'' it. ALJ at 45. Next, she noted that aside from Respondent's ''admission that he prescribed anabolic steroids to [his employer] prior to conducting blood work,'' there was ''no evidence that [he] failed to conduct physical examinations or blood work prior to prescribing any controlled substance to any other patient'' and that he testified ''that all new patients are given a physical exam.'' *Id.* She further noted that Respondent had prescribed anabolic steroids only to this person, that he did so only ''on two occasions,'' and that he ''credibly stated that he will not prescribe anabolic steroids again.'' *Id.* at 45–46.

Next, the ALJ found that, although Respondent ''had not remedied all of his record-keeping and security issues between the different audits, various witnesses stated that [he] had rectified many problems.'' *Id.* at 45. Moreover, the ALJ observed that he no ''longer works at [the clinic] where drug recycling was a problem.'' *Id.* at 46.

While concluding that Respondent's ''lack of attention to the responsibilities of a registrant is extremely troublesome,'' the ALJ recommended that ''Respondent's application for a DEA registration'' be granted. *Id.* at 47. However, based on his recordkeeping and security violations, the ALJ recommended that his registration be restricted to allow only the prescribing of controlled substances. *Id.* In addition, the ALJ recommended that Respondent be required to file quarterly reports of his controlled substance prescribing with the local DEA office, that he be required to consent to unannounced inspections that were conducted without an Administrative Inspection Warrant, and that he be admonished. *Id.* Finally, the ALJ recommended that these restrictions be imposed for a period of three years commencing on the effective date of this Order. *Id.*

Both parties filed Exceptions to the ALJ's Decision. Thereafter, the record was forwarded to me for Final Agency Action.

On November 19, 2010, the Government filed a request to supplement the record. Government's First Request to Supplement Record, at 1. In its request, the Government noted that ''Respondent was the subject of a criminal case * * * regarding the same activities that were the subject of the administrative proceedings,'' and that on July 28, 2010, the United States and Respondent filed a plea agreement with the U.S. District Court. *Id.* The Government further noted that on November 3, 2010, the District Court entered its Judgment. *Id.*

Having reviewed the record in its entirety and considered both parties' Exceptions, I adopt the ALJ's findings of fact and conclusions of law except as noted below. However, I reject the ALJ's recommended sanction and conclude that the numerous violations established on this record mandate the imposition of a period of outright suspension. As ultimate factfinder, I make the following findings of fact.

Findings

Respondent's License and Registration Status

Respondent is a nurse practitioner licensed by the Idaho Board of Nursing. ALJ at 4. Respondent, who has been a nurse practitioner for approximately thirty years, also holds a registration issued by the Idaho Board of Pharmacy which authorizes him to dispense controlled substances under state law. Tr. 326–27, 394. Under Idaho law, nurse practitioners (NP) are authorized to dispense the same drugs as a physician. Tr. 447.

Respondent also held two DEA Certificate of Registrations, MB1090670 and MB1294711, each of which authorizes Respondent to dispense controlled substances in schedules 3N, 4 and 5, as a mid-level practitioner, at the addresses of 5216 E. Cleveland Blvd., Caldwell, Idaho, and 27 E. Fairview Avenue, Meridian, Idaho, respectively. GX 1, at 1; Certification of Registration History, at 1 (filed April 13, 2010). Both of these registrations are for weight loss clinics, which do business under the name of Healthy Habits Wellness Clinic (Healthy Habits), and are owned by Kimball Lundahl, a chiropractor and naturopath. Tr. 20, 265, 395–96. Dr. Lundahl does not,

however, have authority to dispense controlled substances under either Idaho or Federal law. *Id.* at 20.

On March 30, 2004, Respondent first obtained the Caldwell registration. Certification of Registration History, at 1. This registration was to expire on July 31, 2009; however, on the same date, and on which date this proceeding was pending, Respondent filed a renewal application. *Id.*

On September 13, 2005, Respondent first obtained the Meridian registration. *Id.* This registration was to expire on July 31, 2008; however, on July 16, 2008, Respondent filed a renewal application. *Id.* According to the Certification of the Chief of the Registration and Program Support Section, the renewal applications for both registrations were deemed timely by him and both of these registrations remain in effect pending the issuance of this Final Order. *See id.; see also* 5 U.S.C. § 558(c). However, under DEA's regulation, where an Order to Show Cause has been issued to a registrant, ''an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his/her order.'' [1] 21 CFR 1301.36(i). DEA has previously interpreted this regulation as requiring a registrant, who has been served with an Order to Show Cause, to file his renewal application at least 45 days before the expiration of his registration, in order for it to continue in effect past its expiration date and pending the issuance of a final order by the Agency. *Paul Volkman,* 73 FR 30630, 30641 (2008). Accordingly, I find that because Respondent had previously been served with the Order to Show Cause, he did not file a timely renewal application for the Caldwell registration and that this registration has expired. However, I further find the renewal application for this registration is currently before the Agency. Moreover, I further find that Respondent's Meridian registration has remained in effect pending the issuance of this Decision and Final Order.

The Investigation

From January 2004 through February 2007, Respondent worked on a part-time basis at a clinic, which was owned by one Janet Green and was known as Malibu Medical Weight Loss and Nutrition (Malibu Medical). Tr. 399. At the time Respondent first started working at Malibu Medical, the clinic employed Doctor H., who was in his late eighties. *Id.* at 467. Dr. H. and Respondent alternated their days at the clinic until June 27, 2005, when Dr. H. left his employment. *Id.* at 78. On that date, Dr. H. and Respondent signed a document which stated that ''all of the controlled substances on the premises were being transferred to'' Respondent.[2] *Id.*

In December 2004, Respondent began working part-time at the Meridian location of Healthy Habits.[3] Tr. 20, 97, 395, 401, 496. At the time, Dr. W. was responsible for ordering and handling the controlled substances which the clinic dispensed. *Id.* at 99–100.

On August 12, 2005, Dr. W. left the clinic and Respondent became the clinic's DEA registrant. *Id.* at 20, 77, 99–100, 194; GX 2, at 4. However, when Dr. W. left the clinic, he did not transfer the controlled substances inventory to Respondent with a signed inventory documenting the transfer. Tr. 21, 100–03; GX 2, at 4. A second DEA-registered nurse practitioner, J.B. (NP B.), worked alongside Respondent at Healthy Habits until December 12, 2005;[4] however, the date she began her employment at Healthy Habits is not disclosed in the record. Tr. 22, GX 2, at 3–4.

On December 6, 2005, F.C., the Chief Investigator for the Idaho Board of Pharmacy (Board), received a phone call from an FDA Special Agent (S/A), who alleged that the staff of the Health Habits Meridian Clinic was administering HGH for weight loss. GX 2, at 1. The FDA S/A also reported that he ''had obtained advertisements from a Healthy Habits client,'' which showed that the clinic was advertising HGH ''for weight loss.'' *Id.* Based on this information, F.C. decided to visit the clinic.

The next day, F.C. received a phone call from a Meridian police officer, who was a Healthy Habits client and ''needed to know what law was violated when a doctor's employee administered or dispensed more medication to a patient than was ordered by the doctor.'' *Id.* at 2. F.C. went to the Meridian Police Department and interviewed the officer, who reported that Lundahl's ex-wife, who had formerly worked at the clinic but was now getting a divorce, had filed a complaint alleging that ''some employees were stealing medications from the clinic.'' *Id.;* Tr. 15–16. The officer also told the CI that she was being given the phentermine, a schedule IV controlled substance, by a medical assistant and not a licensed practitioner. *Id.*

The same day, F.C., who was accompanied by another Board employee, went to Healthy Habits and asked to talk to a practitioner. Tr. 21. The clinic's owner, Kimball Lundahl, appeared and introduced himself. GX 2, at 3. F.C. asked Lundahl if he was a doctor; Lundahl said that he was a chiropractor and naturopath. GX 2, at 3. F.C. then asked to see where the controlled substances were kept and the controlled substances records. *Id.* When Lundahl asked what F.C.'s objective was, Lundahl told him he was going to contact his attorney before saying more. *Id.* F.C. then told Lundahl that as a chiropractor and naturopath, he was not authorized to handle controlled substance and that F.C. needed to talk with the nurse practitioners who had ordered the controlled substances. *Id.* Lundahl told F.C. that one of the nurse practitioners (NP B.) ''was seeing patients'' and that Respondent ''would be in at 2:00 p.m.'' *Id.*

Lundahl then took F.C. and the Board employee to another room and showed him both NP B.'s and Respondent's DEA registration. *Id.* F.C. then told Lundahl

[1] This regulation further provides that ''[t]he Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.'' 21 CFR 1301.36(i). However, given the allegation that Respondent had prescribed anabolic steroids without a legitimate medical purpose, and that he had failed to maintain proper security and keep proper records for the controlled substances he ordered and dispensed, ALJ Ex. 1, at 1–2; I find that an extension of his registration would have been ''inconsistent with the public health and safety.'' 21 CFR 1301.36(i).

[2] Based on Respondent's testimony, the ALJ found that Dr. H. left the clinic ''sometime around December 2005,'' and that when he ''left, he transferred his inventory to'' Respondent. ALJ at 22 (citing Tr. 468). However, the ALJ also noted that ''[o]n June 27, 2005, [Respondent] took over as the medical practitioner for Malibu * * * from Dr. [H.], the previous DEA registrant.'' *Id.* (citing GX 3, at 2; Tr. 78, 467). The latter finding is supported by the January 11, 2006 Report of Investigation submitted by F.C. of the Idaho Board of Pharmacy which related that, on December 29, 2005, Ms. Green told him that the transfer had occurred on June 27, 2005, and that Respondent had taken over the practice on that date. GX 3, at 1–2. Based on the contemporaneous nature of the Report of Investigation, I find that the transfer of the controlled substances occurred on June 27, 2005. GX 3, at 1–2.

[3] At some point, Respondent also began working at the Caldwell location, and at the time of the hearing, he was working at both locations. Tr. 397.

[4] According to a note written by NP B., although she was working at Healthy Habits on December 7, 2005, she had left the clinic by December 12th. GX 2, at 22.

that Respondent's ''DEA number had been changed to another location'' and that NP B. ''was the only individual we had registered at his address.'' *Id.* However, as found above, Respondent had been registered at the Meridian clinic since September 13, 2005.

NP B. then met with F.C. and stated that both she and Respondent ''had two controlled substances registrations'' and that ''she ha[d] never ordered any controlled substances to that address.'' *Id.* F.C. then asked Lundahl to get the controlled substance records; he also asked NP B. to show him the controlled substances but she did not have the key to the cabinet in which they were stored. GX 2, at 3; Tr. 21–22. Upon obtaining the key from another employee, the cabinet was opened and F.C. observed manufacturer-size bottles of phentermine,[5] as well as ''a large number of prescription bottles in which the phentermine had been transferred,'' but that ''[n]one of the prescription bottles had labels on them.'' GX 2, at 3. F.C. told Lundahl and NP B. that the prescription bottles must be labeled. *Id.*

After being shown the cabinet that was used to store phentermine in another exam room, F.C. asked NP B. to explain the procedures used to dispense the controlled substances. NP B. stated that she would write a ''prescription'' and that the ''medical assistant'' would then ''get[] the medication from the cabinet and give[] it to the patient.'' GX 2, at 4. Clinic staff would then take the form and enter the information into the clinic's computer. *Id.* F.C. then told NP B. that such an order was not a prescription, as it was not ''intended to be taken to a pharmacy to have the medication dispensed.'' *Id.* F.C. then reviewed records which were computer generated reports of what the clinic had sold that day; however, the reports listed all items that had been sold and ''not just controlled substances.'' *Id.*

Respondent arrived at the clinic and explained that he was now the practitioner in charge and had become the clinic's DEA registrant upon Dr. W.'s departure. GX 2, at 4. When F.C. told Respondent that upon the latter event, he and Dr. W. should have done an inventory and that a record should have been created to document the transfer, Respondent indicated that no such inventories or documented transfers were done.[6] *Id.;* Tr. 21. F.C. told Respondent that the clinic's dispensing records included both controlled and non-controlled drugs and that controlled substance records ''needed to be maintained either separately from * * * other records * * * or in such form that the [controlled substance] information * * * is readily retrievable from [the clinic's] ordinary business records.'' GX 5, at 4–5.

F.C. also learned that the clinic staff was not signing and dating invoices when controlled substances were being received and was not notating the quantity received. Tr. 22; GX 2, at 5. When F.C. asked to see the controlled substance invoices, he found that Healthy Habits had received phendimetrazine (a schedule III controlled substance, 21 CFR 1308.13(b)), phentermine, and HGH (a schedule III controlled substance under Idaho but not Federal law) from two companies that were not licensed to distribute drugs in Idaho. GX 2, at 5, 7–10; Tr. 23. However, the company which distributed the Phendimetrazine and Phentermine was a DEA registrant. GX 2, at 7–9.

F.C. then asked Respondent if ''he personally took care of the records.'' *Id.* at 5. Respondent said ''no.'' *Id.* F.C. then determined that the records were maintained by the medical assistant. *Id.* Respondent also said that he did not review the controlled substance records to determine whether they were accurate and that he did not know where they were kept. *Id.;* Tr. 22–23. Upon determining that neither Respondent nor NP B. locked up the controlled substances at the end of the day, F.C. advised them that ''they need[ed] to insure[sic] that the [controlled] substances [were] secured and that no one [had] access to them when there is no practitioner on duty.'' GX 2, at 5. At the end of the visit, F.C. told Lundahl that he would prepare a letter to Respondent identifying the deficiencies and require [him] to respond in writing listing the corrective actions taken.'' *Id.*

On December 16, 2005, F.C. received a letter from Healthy Habits' counsel enclosing four letters executed by the clinic's employees including Respondent[7] which ''outlin[ed] the meeting on the 7th and propos[ed] in a very general way, corrections to problems identified on the 7th.'' *Id.* at 6, 11–13, 15–22; *see also id.* at 12–23; RXs 3 & 5. In his letter, Respondent acknowledged the various deficiencies found by F.C. and stated that the clinic ''is currently doing all we can to comply with all laws and regulations of the state of Idaho,'' that the clinic ''wish[ed] to completely comply with all laws and regulations,'' and that the clinic was ''currently making the above * * * changes told to us.'' GX 2, at 15–16.

On December 29, 2005, F.C., accompanied by a DEA Diversion Investigator (DI), visited Malibu Medical, where they were greeted by its owner, Janet Green, and her son, Joe Green. GX 3, at 1; Tr. 27, 123–24. Ms. Green took the Investigators to an exam room and opened up a locked closet in which there was a locked metal cabinet which contained various controlled substances and records. GX 3, at 1–2. However, the clinic's staff had access to the controlled substances cabinet when Respondent was not on the premises. GX 3, at 1–2; Tr. 29–30; Tr. 125, 128 (testimony of DI).

F.C. counted the controlled substances on hand and compared them with a daily count sheet maintained by the clinic; none of the five items he counted matched the items on the report. F.C. then proceeded to audit four controlled substances (diethylpropion[8] in both 25 and 75 mg strength, and phendimetrazine in 35 and 105 mg strength) for the period June 27, 2005[9] through December 28, 2005. Tr. 27–28; GX 3, at 2. According to F.C., he used computer generated reports for the quantity received, which he compared to the actual invoices and found them to be accurate; however, F.C. noted that the invoices did not indicate the date of receipt and were not initialed. GX 3, at 2. He also used a computer generated report for the quantity dispensed.[10] F.C. stated that he compared one day of the computer generated list of dispensings to the sign out log and found it to be accurate. *Id.*

F.C. found that Respondent was short 212 capsules of diethylpropion 75 mg and 685 capsules of diethylpropion 25 mg. GX 3, at 2. F.C. also found that Respondent was short 2,056 capsules of phendimetrazine 105 mg and 8,115 capsules of phendimetrazine 35 mg. In total, F.C. found that Respondent was short approximately 11,000 dosage units of schedule III and IV controlled substances. *Id.;* Tr. 27–28. These

[5] Phentermine is a schedule IV controlled substance. 21 CFR 1308.14(e)(9).

[6] F.C. also told Respondent that the State Board's rule requires that an inventory of controlled substances be performed annually and DEA's rule requires that it be performed bi-annually.

[7] The letters were from Respondent, NP B., Dr. Lundahl, and one K.S. *See* GX 2, at 13–23.

[8] Diethylpropion is a schedule IV stimulant. 21 CFR 1308.14(e).

[9] As found above, on June 27, 2005, Respondent had assumed control of the clinic's controlled substance inventory when Dr. H. left the clinic. GX 3, at 2. Ms. Green provided the Investigators with documentation of the transfer, which included inventories signed by both Respondent and Dr. H., the previous DEA registrant. *Id.*

[10] F.C. stated in his Supplemental Report of Investigation (GX 3) that he and Ms. Green had compared one day of the dispensing report with ''the sign out log and found the * * * information to be accurate.'' GX 3, at 2.

shortages were significant in size. *Id.* at 29.

When Respondent arrived at the clinic, the DEA DI presented him with a Notice of Inspection, which he signed. GX 3, at 3. F.C. asked Respondent if he remembered what he had been told about locking up the controlled substances at the end of the work day and allowing persons, who lacked legal authority to handle controlled substances, to have access to them when he was not present. GX 3, at 3. Respondent acknowledged that he remembered. *Id.* When F.C. then asked why Ms. Green had access to the controlled substances in his absence, Respondent stated he did not ''have a key to the cabinet or the office.'' *Id.*

F.C. ''then told [Respondent] that he was short approximately 11,000 dosage units of'' controlled substances, and when asked by the DI ''where he thought the missing substances were,'' Respondent ''had no answer.'' *Id.* Respondent denied having taken any for his personal use and again stated ''that he did not have a key to the cabinet.'' *Id.*

F.C. then asked Respondent how long he had been a controlled substance registrant; Respondent stated ''two years.'' *Id.* When F.C. asked Respondent whether he had explained controlled substance recordkeeping and security requirement to the clinic's staff; Respondent stated that he did ''not know what the requirements'' were. *Id.;* Tr. 30, 126. F.C. then told Respondent that the shortages provided grounds for the Board to revoke or restrict his state registration. GX 3, at 3. When Respondent said that he wanted to keep his registration, F.C. told him that he had until January 10, 2006 to ''review the records to identify any record-keeping errors that might account for the missing medication.'' GX 3, at 3; Tr. 31.

On January 10, 2006, F.C. and the DI met with Respondent, his attorney at the time (who also represented Dr. Lundahl and Healthy Habits), and Ms. Green. GX 3, at 3; Tr. 31, 33, 129. Ms. Green maintained that the reason the audit found shortages was because it did not include the drugs dispensed the day before the audit. GX 3, at 3; Tr. 32.

F.C. then suggested that a new audit be performed covering the period from June 27, 2005 through January 10, 2006. GX 3, at 3. F.C. used the same beginning inventory (as was used for the first audit), took an inventory with Ms. Green of the controlled substances then on hand, and used the clinic's computer generated reports for the quantity received and dispensed. *Id.*

The audit found an overage of thirty-six dosage units of phendimetrazine 105 mg and a shortage of 161 dosage units of phentermine 35 mg. GX 3, at 3–4. The audit also found that another drug, which was not specified on the record, had an overage of 681 capsules. *Id.* at 4; Tr. 33.

Ms. Green stated that the overage was caused ''probably because of the recycled medications.'' GX 3, at 4; Tr. 34, 129–30. She then explained that patients would return drugs to the clinic and that the clinic would re-dispense the drugs to a different patient. GX 3, at 4; Tr. 34. F.C. told Respondent and Ms. Green that the clinic ''could not accept medications from patients and reuse them.'' [11] GX 3, at 4. In his testimony, Respondent maintained that he did not know that the clinic was re-dispensing drugs and that when he found out, he told her the practice was illegal.[12] Tr. 464, 466.

F.C. then asked Respondent whether ''he had restricted the access to the controlled substances''; Respondent stated that ''he [had] the only keys to the drug cabinet.'' GX 3, at 4; Tr. 34. F.C. testified that at the conclusion of the visit, he felt that Malibu Medical ''was probably squared away.'' Tr. 34, 131; *but see* GX 3, at 4 (''I said that the audit at Malibu Medical seems to have been corrected but that I don't understand how.'').

On January 11, 2006, F.C. and the DI went back to Healthy Habits and met with Respondent, his then attorney, and Dr. Lundahl. GX 3, at 4. The DI presented Respondent with a Notice of Inspection, which Respondent signed. *Id.* Respondent showed the Investigators where the controlled substances were kept and stated that he was the only one with a key to the cabinet. *Id.* Upon opening the cabinet, the Investigators again found that there were controlled substances in unlabeled prescription bottles. *Id.* F.C. again told Respondent (and the others) that the ''bottles needed to be labeled.'' *Id.* They stated that ''they understood.'' *Id.*

Respondent provided an annual inventory that he had completed on December 12, 2005, and Lundahl stated that the clinic had ''opened for business on 12/17/04.'' GX 3, at 4. The Investigators then audited the clinic's handling of six controlled substances for the period of December 17, 2004 through December 12, 2005. *Id.*

The audit found that there were overages of 1,807 dosage units of phendimetrazine 35 mg, 184 dosage units of phendimetrazine 105 mg, 7,036 dosage units of diethylpropion 25 mg, and 74 dosage units of phentermine 15 mg, and a shortage of 3,028 dosage units of phentermine 37.5 mg. *Id.* While the Investigators also attempted to audit the phentermine 30 mg, they could not do so because the only dispensing records available were for November and December 2005. *Id.* Moreover, the clinic staff estimated that it would ''take three weeks to create the reports necessary to complete th[e] audit.'' *Id.*

F.C. further determined that the clinic ''did not have all the invoices'' showing its purchases and that ''no one knew where any other invoices were.'' GX 3, at 4–5; Tr. 37. Moreover, ''the computer generated report listing the medication dispensed was off by seven days.'' GX 3, at 4. In addition, a dispensing report for one of the drugs ''listed only a few months of transactions'' because ''someone had misspelled the name of the drug'' and the report had to be run twice to get the total number of dosage units that had been dispensed. *Id.* at 5.

F.C. found it significant that the clinic's recordkeeping did not allow for the completion of the phentermine 30 mg audit and that three of the audits found overages/shortages of over 1,000 dosage units. Tr. 36. F.C. testified ''[d]espite any computer deficiencies, it is still [Respondent's] responsibility * * * to maintain complete and accurate records of his controlled substance handling.'' *Id.* at 135. At the conclusion of the visit, the Investigators gave Healthy Habits until January 20, 2006 to get its records in order. *Id.* at 38.

On August 28, 2006, an FDA Special Agent obtained a federal search warrant, which authorized a search of Healthy Habit's Meridian clinic for evidence relevant to violations of the Food, Drug and Cosmetic Act, specifically 21 U.S.C. 333(e). GX 6, at 1. The warrant authorized the seizure, *inter alia,* of records pertaining to the clinic's purchases and distributions of HGH, as well as any HGH. *Id.* at 4; Tr. 136.

On August 30, 2006, F.C., the DI, and FDA Agents executed the warrant. Tr. 38–39, 136, 217. Initially, only one employee, the receptionist, was on site when the warrant was served. *Id.* at 41, 43.

As found above, although F.C. had previously instructed Respondent that

[11] F.C. told Ms. Green and Respondent that if a patient returned medication, the clinic should ''flush the medications down the toilet in the presence of the patient.'' GX 3, at 4. To make clear, this is not a proper method of disposing of controlled substances.

[12] According to F.C., when Ms. Green explained that the overages were ''most likely'' caused by the re-dispensing of the drugs, Respondent nodded his head in agreement thus suggesting that he was aware of the practice. Tr. 194–96. While it is not entirely clear in the decision, the ALJ apparently resolved this factual dispute in favor of Respondent. *See* ALJ at 24.

he alone should have the key to the controlled substances cabinet, and that during the January 11 inspection, Respondent had stated that he was the only person with the key, ''one of the assistants[] had the key.'' *Id.* at 137. Moreover, in an unlocked refrigerator in an examination room, the DI found several vials in a small box, all approximately 1.5 inches tall and labeled ''Nandralone Decaloid,'' an anabolic steroid and schedule III controlled substance.[13] *Id.* at 138, 141. The labels identified the prescriber as ''Dr. Paul Battershell,'' the patient as ''Kimball Lundahl,'' and the pharmacy as '' 'Applied Pharmaceuticals' '' [14] of Mobile, Alabama, a compounding pharmacy which was suspected of unlawfully distributing HGH and anabolic steroids. *Id.* at 138–39; 215–16. However, because the warrant did not authorize the seizure of anabolic steroids, the DI left the vials of nandrolone decaloid in the refrigerator. *Id.* at 139.

Pursuant to the warrant, law enforcement officers seized medical records for patients receiving HGH, records documenting the clinic's receipt and distribution of HGH, as well as four vials of HGH, which had labels listing ''Dr. Battershell'' as the prescriber. *Id.* at 217–18. Subsequently the FDA tested the vials and confirmed that it was HGH. *Id.* at 219.

During the search, the lead FDA S/A interviewed Dr. Lundahl, who said that the HGH was distributed for anti-aging purposes. *Id.* at 223. Dr. Lundahl stated that Respondent prescribed both HGH and nandralone, an anabolic steroid also known as Deca-Durabolin to him. *Id.* However, Lundahl stated that the clinic had not distributed anabolic steroids to anyone else.[15] *Id.*

Later that day, the FDA Agent (and another FDA Agent) went to Malibu Medical and interviewed Respondent. *Id.* at 224. Initially, Respondent denied prescribing anabolic steroids to Dr. Lundahl. However, when the Agents confronted him with Lundahl's statement and warned him ''that lying to a federal agent was a criminal offense,'' Respondent admitted that he had lied and that he had ''prescribed Deca-Durabolin'' to Lundahl ''because * * * Lundall had asked him to do it.'' *Id.* at 225. Respondent also said that ''he wasn't exactly sure what Decadurabolin even was, but [that] it was similar to'' HGH. *Id.*

While Respondent did not perform bloodwork on Lundahl prior to prescribing HGH to him, *id.* at 511, there is no evidence establishing when Respondent first prescribed Deca-Durabolin to Lundahl. Moreover, the Government did not introduce Lundahl's patient file into evidence.[16]

According to Respondent, Lundahl ''had degenerative deterioration of his cervical spine,'' and he had a document from Lundahl's physician, who was ''a specialist in this area,'' as well as an MRI to support this. *Id.* at 402. At the hearing, Respondent testified that he prescribed Deca-Durabolin to Lundahl because he had inflammation and ''pain in his neck,'' and denied that he had prescribed the steroid for muscle building purposes. *Id.* at 402–03.

Respondent also testified that Dr. Lundahl was the only person to whom he had prescribed anabolic steroids and that he was no longer prescribing them to him. *Id.* at 422. Moreover, Respondent prescribed the steroids to Lundahl for approximately one year, writing two prescriptions, each with two refills. *Id.* at 506. The Government did not introduce any evidence refuting any of Respondent's testimony regarding the propriety of the steroid prescriptions.[17]

On October 2, 2007, the Idaho Board adopted a Stipulation and Order, which Respondent entered into with the Board's Executive Director; the Order resolved the various security and recordkeeping issues that were found during the inspections of both the Healthy Habits and Malibu Medical clinics. GX 9, at 1–2. In the Stipulation, Respondent admitted to ''violating Idaho Code § 37–2718(a)(4) by failing to obtain prior approval from the Special Agent in Charge of DEA before storing other non-medical materials (a cash box) with schedule III–V controlled substances as required by 21 CFR 1301.72(b)(8)(i) & (ii).'' [18] *Id.* at 2. Respondent also admitted to ''violating Idaho Code § 37–2720 [19] by failing to keep records and maintain inventory by having inventory in excess of that recorded as required by 21 CFR 1304.04[.]'' *Id.*

The Stipulation and Order placed Respondent's state controlled substance registration on probation for one year subject to certain conditions including that he pay a $250.00 fine and agree to notify his employer and any subsequent employers of the Stipulation's terms. *Id.* at 3. In addition, Respondent agreed to ''comply with all state and federal laws and rules regulating controlled substances'' and to be prepared to ''show evidence of such compliance upon request of the Board of Pharmacy.'' *Id.* Finally, Respondent agreed to ''develop a protocol for security'' and ''a protocol for maintenance of records and inventory,'' both which were subject to the Board's review and approval, and which he agreed to follow for ''so long as he maintains'' a state controlled substance registration. *Id.*

On August 11, 2009, a Federal grand jury indicted Respondent along with Kimball Lundahl and Healthy Habits. GX 10. While Respondent was initially charged with one count of conspiracy to unlawfully distribute HGH, in violation of 18 U.S.C. 371 and 21 U.S.C. 333(e); five counts of unlawful distribution of HGH on various dates, in violation of 21 U.S.C. 333(e); one count of conspiracy to unlawfully distribute nandralone, a schedule III controlled substance, in violation of 21 U.S.C. 846; and four counts of unlawfully distributing nandralone, *id.* at 12–15; according to the plea agreement, at some point, the Government filed a superseding information. Rule 11 Plea Agreement, at 1. The information charged Respondent with one count of ''causing the introduction into interstate commerce of a misbranded drug, in violation of'' 21

[13] 21 CFR 1308.13(f)(1).

[14] Subsequent testimony of the FDA Agent revealed that this company was named Applied Pharmacy Services (''APS''). Tr. 319.

[15] The Government elicited extensive testimony from both the FDA Special Agent and Respondent regarding the latter's prescribing of HGH. It also introduced various documents showing that Respondent had ordered HGH from a compounding pharmacy, which was not an FDA approved product. However, for the reasons stated in *Tony T. Bui,* 75 FR 49979, 49989 (2010), I deem it unnecessary to make detailed findings regarding Respondent's prescribing of HGH.

[16] Respondent maintained that he later tested Lundahl and found that his Insulin-like Growth Factor-1 test (''IGF–1'') levels were low. *Id.* at 511. He also stated that because Lundahl had previously been prescribed HGH by his father, who is ''a doctor,'' he had simply renewed the prescriptions. *Id.* at 502, 511. However, earlier in his testimony, Respondent stated that Lundahl's father was ''a chiropractor'' and thus would not have had authority to prescribe any drug under Idaho law. *Id.* at 502.

[17] While the Government introduced a copy of the Indictment which charged Respondent with unlawfully distributing Nandralone on various dates to include August 31 and December 29, 2005, as well as April 24 and August 23, 2006, *see* GX 10, at 12–15, it is fundamental that an indictment is only an accusation and not proof that Respondent committed the acts alleged.

[18] Under 21 CFR 1301.72(b)(8)(ii):

Non-controlled drugs, substances and other materials may be stored with Schedule III through V controlled substances in any of the secure storage areas, provided that permission for such storage of non-controlled items is obtained in advance, in writing, from the Special Agent in Charge of the DEA for the area in which such storage is situated.

[19] Idaho Code § 37–2720 provides as follows:

[Persons] registered to manufacture, distribute, or dispense controlled substances under this act shall keep records and maintain inventories in conformity with the recordkeeping and inventory requirements of federal law and with any additional rules the board issues.

U.S.C. 331(a) and 333(a)(1). *Id.* at 4. The factual recitation made clear that the basis of Respondent's liability was that Respondent had purchased HGH from APS that FDA had ''not approved for any purpose,'' and as such, ''did not include any approved labeling and * * * did not contain adequate directions for use by a layperson.'' *Id.* Notably, the information did not charge Respondent with any offenses under the Controlled Substance Act. *See id.*

At the hearing, Respondent voluntarily testified as a Government witness. Tr. 394. He testified that he has not prescribed HGH since the time he was told by the FDA Agent that only a physician could prescribe this substance. *Id.* at 409, 418, 479, 494. He also testified that the reason the nandralone was stored in the unlocked refrigerator and not with the other controlled substances was because Dr. Lundahl thought it was best to store it at cooler than room temperature. *Id.* at 424.

Although Respondent stopped prescribing HGH, he maintained that it was legal for him to do so because under Idaho law a nurse practitioner can prescribe anything that a medical doctor can.[20] Tr. 447, 491. He stated, ''I can prescribe [HGH] because it's on my formulary.'' *Id.* at 448.

As to the Malibu Medical's practice of re-dispensing medications that were returned by its patients, Respondent testified that he did not know that the staff was doing that. *Id.* at 464. He further maintained that when Ms. Green mentioned this to the Investigators, he told her it was illegal. *Id.*

As to the violations found during the inspection of Healthy Habits, Respondent testified that he no longer used the computer to track controlled substances; instead, he uses paper records. *Id.* at 471. He maintained that the reason why the audit could not be completed on the phendimetrazine 35 mg was because of an irreparable computer problem. *Id.* at 472. He also explained that the clinic no longer packed the prescriptions it dispensed, but instead obtained pre-packed bottles. *Id.* at 472. He further testified that he counted his inventory of controlled substances every day.[21] *Id.* at 559.

Although Respondent ultimately acknowledged that as a registrant, it was his responsibility to know the law and regulations applicable to controlled substances, he nevertheless asserted that if one did not ''have any experience with this,'' the regulations did not provide ''the answers'' and that ''they need to have a class and tell you * * * what's expected of you with this controlled substance license.'' Tr. 567–68, 569. Similarly, he testified that ''it's the Board of Pharmacy's obligation to inform nurse practitioners exactly of * * * what the conditions you're working in, and how to maintain records, how to do what is correct.'' *Id.* at 569. He stated his belief that ''the Board of Pharmacy is negligent'' for not having provided more instruction to controlled substance registrants. *Id.* at 570.

Discussion

Section 304(a) of the CSA provides that a ''registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would make his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In determining the public interest, Congress directed that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for a registration. *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

With respect to a practitioner's registration, the Government bears the burden of proving, by a preponderance of the evidence, that Respondent has committed acts which render his registration inconsistent with the public interest. 21 CFR 1301.44(e). However, where the Government satisfies its *prima facie* burden, the burden then shifts to the registrant to demonstrate why he can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 363, 380 (2008).

Having reviewed the record in its entirety, I conclude that the evidence relevant to factors two (Respondent's experience in dispensing controlled substances), four (Respondent's compliance with applicable laws related to controlled substances) and five (such other conduct which may threaten public health and safety) establishes that Respondent has committed acts which render his ''registration inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). While I have considered Respondent's evidence, I conclude that the record supports the suspension of his registration. I further reject the ALJ's recommendation that Respondent's application ''be granted at this time.'' ALJ at 47. However, in the event Respondent complies with the condition set forth below, his applications will be granted.

Factor One—The Recommendation of the State Licensing Board

As found above, Respondent entered into a Stipulation and Order with the Idaho Board of Pharmacy which placed his state registration on probation for a period of one year subject to various recordkeeping and security conditions. The Board did not, however, make a recommendation to DEA as to the disposition of this matter.

While Respondent apparently retains authority under Idaho law to dispense controlled substances, DEA has repeatedly held that a practitioner's possession of state authority ''is not dispositive of the public interest inquiry.'' *George Mathew,* 75 FR 66138, 66145 (2010) (citing *Patrick W. Stodola,* 74 FR 20727, 20730 n.16 (2009); *Robert A. Leslie,* 68 FR at 15230). ''[T]he Controlled Substances Act requires that the Administrator * * * make an independent determination [from that made by state officials] as to whether the granting of controlled substance

[20] *See* Idaho Admin. Code § 23.01.01.315.05 (''All authorized advanced practice professional nurses may dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws * * *.''); *see also* Idaho Code Ann. § 54–1402(1) & (1)(a) (defining ''advanced practice professional nurse'' to include ''nurse practitioners'' and defining ''nurse practitioner'') ; Idaho Admin. Code § 23.01.01.271.02 (defining ''advanced practice professional nurse'' as including ''nurse practitioners'').

He also testified that he did not prescribe HGH off-label and was prescribing it for Adult Growth Hormone Deficiency, which is an FDA-approved indication, and pointed to the IGF–1 tests he had done on his patients and a protocol of the American Academy of Anti-Aging Medicine as proof. *Id.* at 449, 452, 460–61, 550.

[21] Respondent also provided unrefuted testimony regarding his compliance with the State Board's order. *Id.* at 557–558.

privileges would be in the public interest.'' *Mortimer Levin,* 57 FR 8680, 8681 (1992). Consistent with Agency precedent, this factor is not dispositive either for, or against, the continuation of Respondent's registration. *See also Edmund Chein,* 74 FR 6580, 6590 (2007), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008), *cert. denied,* __ U.S. __, 129 S.Ct. 1033 (2009).

Factors Two and Four: Respondent's Experience in Dispensing Controlled Substances and His Compliance With Applicable State, Federal, and Local Law

While Respondent has been a licensed nurse practitioner for more than thirty years, his experience as a dispenser of controlled substances is of considerably shorter duration. Moreover, his experience is characterized by a stunning lack of knowledge of the applicable requirements of Federal law, as well as his numerous failures to comply with the CSA and DEA regulations and to properly supervise those persons who performed these functions at the clinics where he worked.

Under Federal law, ''every registrant * * * shall * * * as soon * * * as such registrant first engages in the * * * dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand.'' 21 U.S.C. § 827(a)(1); *see also* 21 CFR 1304.03(a) & (b); 1304.11. Moreover, ''every registrant * * * dispensing a controlled substance or substances, shall maintain, on a current basis, a complete and accurate record of each such substance * * * received, sold, delivered, or otherwise disposed of by him.'' 21 U.S.C. 827(a)(3); 21 CFR 1304.21(a) & (d); 1304.22(c). Finally, ''[e]very inventory or other record required under this section * * * shall (A) be maintained separately from all other records of the registrant, or (B) alternatively, in the case of nonnarcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant, and * * * shall be kept and be available, for at least two years, for inspection and copying.'' 21 U.S.C. 827(b); *see also* 21 CFR 1304.04(a) & (g).

As found above, when, upon Dr. W.'s departure, Respondent became the practitioner-in-charge and the DEA registrant at Healthy Habit's Meridian Clinic, he failed to take an inventory and document the transfer of the controlled substances on hand. This was a violation of 21 U.S.C. § 827(a)(1) and 21 CFR 1304. Moreover, the clinic's staff was not signing and dating the invoices for the controlled substances that it purchased to reflect the date on which the drugs were actually received. This is a violation of 21 CFR 1304.22(c), which incorporates by reference the requirement of 21 CFR 1304.22(a)(2)(iv) that a registrant maintain records documenting ''[t]he number of units of finished forms and/or commercial containers acquired from other persons, *including the date of and number of units and/or commercial containers in each acquisition to inventory.''* (emphasis added).

In addition, upon examining the clinic's dispensing records, which were maintained in a computer, the State Board Inspector was provided a record that included both controlled and non-controlled drugs. While Federal law allows for nonnarcotic controlled substance records to be maintained electronically, a recordkeeping system must be able to ''separate out'' the controlled substance records ''from all other records in a reasonable time and/or [that the] records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.'' 21 CFR 1300.01(38). The clinic's dispensing records thus did not comply with Federal law. In addition, while Respondent did not maintain the records, he admitted that he did not review them and did not even know where they were kept.

Neither Respondent, nor the other nurse practitioner (who also held a DEA registration), locked up the controlled substances at the end of the day and clinic staff had access to the drugs even where there was no registrant on duty. Under a DEA regulation, all ''registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.'' 21 CFR 1301.71(a); *see also id.* 1301.71(b)(8) (authorizing Agency to consider ''[t]he adequacy of key control systems''); *id.* 1301.71(b)(11) (authorizing Agency to consider ''[t]he adequacy of supervision over employees having access to * * * storage areas''); *id.* 1301.71(b)(14) (authorizing Agency to consider ''[t]he adequacy of the registrant's * * * system for monitoring the receipt, * * * distribution, and disposition of controlled substances in its operations'').

Notwithstanding that Respondent was specifically instructed during the inspection of Healthy Habits that the controlled substances needed to be secured and that no one should have access to them when there was no practitioner on duty, during the inspection of Malibu Medical (which occurred only three weeks later), the Investigators found that the clinic's staff had access to the controlled substances when Respondent was not on the premises.[22] Moreover, here too, the clinic was not recording the actual date it received the controlled substance it purchased. 21 CFR 1304.22(c).

Upon auditing Malibu Medical, the Investigators found significant shortages of several controlled substances including 685 capsules of diethylpropion 25 mg, 2,056 capsules of phendimetrazine 105 mg, and 8,115 capsules of phendimetrazine 35 mg. In total, Respondent was short approximately 11,000 dosage units. These shortages are especially significant given that the audit covered only a six-month period and are indicative (in the best case scenario) of serious record keeping failures. Moreover, when asked during this visit, whether he had explained the controlled substance recordkeeping and security requirements to the clinic staff, Respondent replied that he did ''not know what the requirements'' were.

It is true that at a subsequent audit of Malibu, the clinic's owner maintained that the initial audit had not included drugs that had been dispensed the day before,[23] and that upon doing a new audit, the clinic had overages of thirty-six dosage units of phendimetrazine 105 mg and 681 dosage units of another drug, as well as a shortage of 161 dosage units of phentermine 35 mg. Moreover, the clinic's owner maintained that the overages were probably caused by the clinic's practice of accepting drugs that were returned by patients and re-dispensing them.

Citing DEA regulations (21 CFR 1304.21(a) and 21 CFR 1307.12(a)), the ALJ concluded that the re-dispensing of the drugs violated Federal law. However, 21 CFR 1304.21(a) merely requires that a registrant maintain ''a complete and accurate record of each''

[22] Respondent admitted to F.C. that he remembered that he had been told this.

[23] There is ample reason to be skeptical of Ms. Green's claim that the failure to count a single day's worth of dispensings accounted for most of the shortages, given the size of the shortages and typical dosing of these drugs (which seems quite large to be only one day's worth of dispensings) and that she should have known at the time of the original audit that the dispensing logs were not up to date. Moreover, Respondent, who ultimately is responsible for the maintenance of accurate records, ''had no answer'' as to why the controlled substances could not be accounted for.

However, even assuming the validity of the results of the second audit, the audit still found both shortages and overages. Also, as found above, when Investigators audited the Healthy Habits clinic, here too, there were major issues with the accuracy of Respondent's records.

controlled substance it receives or disposes of. Moreover, 21 CFR 1307.12(a) provides in relevant part, that ''[a]ny person lawfully in possession of a controlled substance * * * may distribute (without being registered to distribute) that substance to the person from whom he/she obtained it.'' The provision thus expressly allows for a patient to return a controlled substance to a dispensing practitioner and neither the Government nor the ALJ cite to any other provision of the CSA or DEA regulations which expressly prohibits this practice.

The Idaho Board of Pharmacy's Rules do, however, prohibit the re-dispensing of controlled substances in the manner that occurred here. More specifically, the Board's rule provides that:

> In the interest of public health, drugs, medicines, sickroom supplies, devices, and items of personal hygiene shall not be accepted for return by any pharmacist or pharmacy after such drugs, medicines, sickroom supplies, devices, and items of personal hygiene have been taken from the premises where sold, distributed, or dispensed, except that medications for in-patients of residential or assisted living facilities, licensed skilled nursing care facilities, and hospitals may be returned to the dispensing pharmacy for credit if the medications are liquid medications that have been supplied in manufacturer sealed containers and remain unopened, or the medications are in unopened ''unit dose'' packaging.

IDAPA 27.01.01(156)(05).[24] The clinic where this practice occurred clearly does not fall within the limited exceptions for certain in-patient facilities provided by the regulation. As even Respondent acknowledged when confronted during the inspection, the practice was illegal. Moreover, beyond the fact that the clinic did not maintain accurate records documenting the return of the drugs, 21 CFR 1304.21(a), as the State's rule expressly recognizes, the practice poses a serious risk of harm to patients because the drugs may have been adulterated by the person to whom they were dispensed. Even accepting the ALJ's apparent crediting of Respondent's testimony that he was unaware that the clinic was engaged in this practice, *see* ALJ at 36, it is particularly disturbing that once again, Respondent was oblivious to the clinic's engaging in an illegal practice.

Thereafter, the Investigators returned to the Healthy Habits clinic and conducted an audit of its handling of six controlled substances from December 17, 2004, the date the clinic opened for business, and December 12, 2005, the date on which Respondent had taken an annual inventory as required under Idaho law. The audit found substantial overages of multiple drugs including 1,807 dosage units of phendimetrazine 35 mg and 7,036 dosage units of diethylpropion 25 mg. Moreover, the audit found a shortage of 3,028 dosage units of phentermine 37.5 mg, and the Investigators could not complete their audit of phentermine 30 mg, because the clinic had dispensing records for only November and December 2005 and the staff stated it would take three weeks to create the necessary reports. In addition, the clinic was missing invoices for its purchases.

Here again, Respondent violated the CSA and DEA regulations by failing to maintain proper records.[25] *See* 21 U.S.C. 827(a)(3); 21 CFR 1304.21(a) & (d); 1304.22(c). Moreover, while the clinic's inadequate recordkeeping was attributed to computer problems, as the DEA registrant, Respondent was responsible for ensuring that the records were being properly maintained.

In addition, while Respondent now assured the Investigator that he was the only person with a key to the controlled substance cabinet, the Investigator again found controlled substances in unlabelled prescription bottles. Under DEA regulations, ''[e]ach commercial container of a controlled substance * * * shall have printed on the label the symbol designating the schedule in which such controlled substance is listed.''[26] 21 CFR 1302.03(a). Thus, Respondent was in violation of this requirement.

Finally, during the execution of the search warrant at Healthy Habits, F.C. found that notwithstanding his previous instruction to Respondent that he alone should have the key to the controlled substance cabinet, as well as Respondent's assurance to him during the January 11 inspection that he alone had the key, one of the clinic's assistants had the key. This reinforces the conclusion that Respondent does not take seriously his responsibilities as a registrant.

Under factor four, the ALJ also considered the Government's contention that Respondent prescribed anabolic steroids to his employer (Dr. Lundahl) for no legitimate medical purpose because he initially did so ''without conducting the necessary physical examination and exhibited a lack of understanding as to when the prescribing of steroids is medically and legally appropriate.'' Gov. Proposed Findings at 6. According to the testimony of the FDA S/A, when he questioned Respondent as to whether he had prescribed nandralone to Dr. Lundahl, Respondent denied doing so. Tr. 225. However, upon the S/A's telling Respondent that either he or Lundahl were lying and that lying to a federal agent is a criminal offense, Respondent admitted to doing so. *Id.*

The FDA S/A testified that Respondent ''wasn't exactly sure what [nandralone] even was, but it was similar to'' HGH. *Id.* The S/A further stated that it was his ''impression'' that [Respondent] had not done a ''good faith medical exam that would justify the prescription of [n]a[n]dralone.'' *Id.* at 226.

The ALJ, however, credited Respondent's testimony that he prescribed the nandralone to treat a degenerative condition in Lundahl's neck which was causing inflammation and pain and that he had both a document from Lundahl's physician and an MRI to support the prescription. While Respondent's denial to the FDA Agent raises a strong suspicion that the prescriptions lacked a legitimate medical purpose, the Government did not produce Lundahl's medical record to show what documentation of Lundahl's condition existed at any point of Respondent's prescribing. 21 CFR 1306.04(a). As for the FDA Agent's testimony that it was his ''impression'' that Respondent had not performed a physical exam, such equivocal testimony does not meet the substantial evidence test. Beyond this, the Government did not produce any evidence (such as either expert testimony or state medical practice standards) which, when coupled with the medical record, might have established that Respondent exceeded the bounds of professional practice in issuing the prescriptions. *United States*

[24] The Board's rule further states that:

> Medications that have been outside the custody and control of the hospital or facility for any reason are not eligible for return. To be considered as having been in the custody and control of the hospital or facility, the medications must have been delivered by the dispensing pharmacy directly to the hospital or facility or to an agent thereof who is authorized and qualified to accept delivery, and the medications must then be held by the hospital or facility in an area suitable for storing medications and not accessible to patients. Once a medication has passed from the hospital or facility storage area to the patient or to the patient's designee for any reason, the medication is no longer eligible for return.

IDAPA 27.01.01(156)(05)(d).

[25] This conduct also violated Idaho Code § 37–2720. *See* GX 9, at 2. This statute provides that persons ''registered to manufacture, distribute, or dispense controlled substances * * * shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the board issues.'' Idaho Code Ann. § 37–2720.

[26] Under a DEA regulation, ''[t]he term *commercial container* means any bottle, jar, tube, ampule, or other receptacle in which a substance is held for distribution or dispensing to an ultimate user.'' 21 CFR 1300.01(b)(6) (emphasis in original).

v. *Moore,* 423 U.S. 122, 142–43 (1975). I thus agree with the ALJ that the Government did not meet the burden of proof on this issue.[27]

However, the numerous violations of both the CSA and state rules pertaining to recordkeeping, security, and re-dispensing of controlled substances, which are proved on this record are sufficient to satisfy the Government's *prima facie* burden of showing that Respondent's continued registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(f).

Sanction

Under Agency precedent, where the Government has made out *prima facie* case that a registrant has committed acts which render his ''registration inconsistent with the public interest,'' he must '' 'present[] sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.''' *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988)).

''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs., Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe-Jonesborough,* 73 FR 364 (2008).

The record here paints a mixed picture as to whether Respondent has rebutted the Government's *prima facie* case. In Respondent's favor, it is undisputed that he has complied with the Idaho Board's Order to develop protocols for maintaining proper security and recordkeeping of controlled substances. He also testified that he no longer uses a computer to track controlled substances and instead uses paper records. Moreover, he now orders controlled substances which have been pre-packaged and labeled. In addition, while I have declined to make findings as to whether Respondent's prescribing of HGH violated 21 U.S.C. § 333, it is undisputed that upon being told by the FDA Agent that his conduct was illegal, he stopped doing so.

Yet other evidence in the record raises a serious question as to whether Respondent can be trusted to responsibly discharge his obligations as a registrant. For example, Respondent failed to properly supervise the clinic staff to ensure that they were maintaining proper records. However, as the registrant, he is the person ultimately responsible for the numerous recordkeeping failures found during the audits of the various clinics including both missing, incomplete and irretrievable records, as well as the audit results which found substantial overages and shortages including one of more than 3,000 tablets. It is especially troubling that these conditions were found—at both the Healthy Habits and Malibu clinics no less—even after the Board Inspector had discussed with Respondent (during the first inspection at Healthy Habits) his responsibility for maintaining proper records and Respondent had signed a letter to the Inspector assuring that he ''wish[ed] to completely comply with all laws and regulations'' and that the clinic was ''currently making the above * * * changes told to us.'' GX 2, at 15–16.

To similar effect, the evidence shows that even after Respondent was told that he, as the registrant, must maintain the key for the controlled substances cabinet and ensure that non-practitioner employees did not have access to the drugs when he was not on duty, in several subsequent inspections, the Investigators found that other individuals had the key to the cabinet when he was not present. Moreover, during the search of Healthy Habits, the Investigators again found this to be the case even though Respondent had previously assured the Investigators that he was the only person with the key. Likewise, Respondent further claimed that he was unaware that the staff of the Malibu Clinic was re-dispensing controlled substances that had been returned by patients.

Were the evidence limited to the recordkeeping and security violations found at the first inspection, these acts would not necessarily warrant a lengthy sanction. However, the evidence is not so limited and manifests a disturbing pattern of indifference on the part of Respondent to his obligations as a registrant.

In her decision, the ALJ noted Respondent's testimony that ''he was ill-informed of many of the record-keeping and security requirements.'' ALJ at 46. She further suggested that Respondent's having undergone the various audits and this hearing ''have undoubtedly been educational.'' *Id.* However, the instruction provided at the various inspections by the Board's Inspector should also have ''been educational,'' and yet, Respondent ignored it.

While Respondent acknowledged at the hearing that he was ultimately responsible for knowing the law and regulations applicable to controlled substances, he then maintained that if one did not ''have any experience,'' the regulations did not provide ''the answers'' and that ''they need to have a class to tell you * * * what's expected of you with this controlled substance license.'' Tr. 567–68. He also contended that the Board of Pharmacy was obligated ''to inform nurse practitioners exactly of * * * what the conditions you're working in, and how to maintain records, [and] how to do what is correct.'' *Id.* at 569.

The language of the CSA and DEA regulations is sufficiently clear as to the scope of the recordkeeping obligations that any responsible registrant could find ''the answers'' if he bothered to read the statutes and regulations. Beyond that, having been personally informed (on two occasions no less) that he had to maintain custody of the controlled substance key and ensure that non-practitioners did not have access to the drugs when he was not on duty, Respondent cannot claim that the applicable rules are unclear. However, given that his conduct manifests that he is not a quick study, it probably would be beneficial for Respondent to take a

[27] The Government also argues that Respondent distributed HGH in violation of 21 U.S.C. § 333(e) for two reasons: (1) he prescribed HGH for anti-aging purposes, a use which has not been approved by the FDA, and (2) because the statute requires that the drug be distributed pursuant to ''the order of a physician'' and ''he is not a licensed physician.'' Gov. Prop. Findings at 5.

In her decision, the ALJ concluded that ''[t]he plain language of 21 U.S.C. § 333(e) states that distribution of [HGH] is illegal unless [done] pursuant to the order of a physician.'' ALJ at 44. Concluding that because ''Respondent is not authorized to handle HGH,'' the ALJ declined to reach the issues of whether Respondent had prescribed HGH for unapproved uses or whether the actual product he dispensed had been approved by FDA.

In *Tony T. Bui,* 75 FR 49979, 49989 (2010), I explained that because DEA is not charged with administering the Food, Drug and Cosmetic Act, the Agency lacks authority to definitively interpret 21 U.S.C. § 333 and to declare the practice of prescribing HGH for anti-aging purposes to be a violation of Federal law. I conclude that this holding likewise bars the Agency from deciding whether Respondent violated the statute by prescribing the drug, because, even though he has authority under state law to prescribe HGH, he is not a physician. Indeed, the question of whether Congress intended to criminalize all prescribing of HGH by non-physicians, including those who can lawfully prescribe the drug under state law, is quintessentially one for judicial cognizance. Notably, while this question could have been resolved in the criminal proceeding, the U.S. Attorney dismissed the charges that Respondent violated 21 U.S.C. § 333.

Respondent's plea agreement does, however, establish that he violated the FDCA by causing the introduction of a misbranded drug into interstate commerce. While this violation of Federal law is a factor to be considered under factor five (such other conduct which may threaten public health and safety), by itself it is not dispositive. Rather, it is relevant only for the limited purpose of assessing the likelihood of Respondent's future compliance with the CSA. *See Wonderyears, Inc.,* 74 FR 457, 458 (2009).

continuing medical education course on controlled substance recordkeeping and security.

I therefore conclude that Respondent's Meridian registration should be suspended for a period of six months and that his applications to renew the Meridian and Caldwell registrations should be held in abeyance during this period. Provided Respondent completes a continuing medical education course [28] which covers controlled substance recordkeeping and security (and commits no other acts which would warrant the denial of his applications), his renewal applications will be granted upon conclusion of this period and new registrations shall issue subject to the following conditions.

1. Respondent shall consent to unannounced inspections by DEA personnel and that such personnel shall not be required to obtain an administrative inspection warrant.

2. Respondent shall perform audits semi-annually for all controlled substances handled by any clinic at which he is the practitioner-in-charge and shall file reports with the local DEA field office within ten business days of having completed the audit. Such reports shall show, for each controlled substance, the beginning and ending inventory, the quantity of each controlled substance received (which shall be supported by a document listing by date each receipt and the quantity received) and the quantity disposed of (which shall be supported by a copy of the clinic's dispensing log and other records documenting the disposal of controlled substances). Respondent shall certify that each report is a true and accurate audit of the clinic's handling of controlled substances.

3. Respondent's failure to comply with either condition shall constitute an act which renders his registration inconsistent with the public interest.

4. These conditions shall remain in effect for three years following the issuance of a new registration and shall apply to any registration granted by the Agency.

In the event Respondent fails to complete a course in controlled substance recordkeeping and security, his registration will be revoked and both of his pending applications will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I hereby order that DEA Certificate of Registration, MB1294711, be, and it hereby is, suspended for a period of six months to begin on the effective date of this Order. I also order that Respondent's applications to renew DEA Certificates of Registration, MB1294711 and MB1090670, shall be held in abeyance pending the completion of the period of suspension. I further order that upon completion of the period of suspension and Respondent's presentation to the Agency of proof that he has completed a Continuing Medical Education course which covers the subjects of controlled substance recordkeeping and security, Respondent's applications to renew the above Certificates of Registration shall be granted subject to the conditions set forth above. Finally, I order that if Respondent fails to complete the aforesaid course, Certificate of Registration MB1294711 shall be revoked and his pending applications to renew his registrations shall be denied. *This Order* is effective August 24, 2011.

Dated: July 14, 2011.

Michele M. Leonhart,

Administrator.

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BILLING CODE 4410–09–P

[28] Such course shall be accredited by a state medical board.

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Training and Related Assistance for Indian Country Jails

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Jails Division is seeking applications for the provision of training and related assistance for Indian Country jails, including those operated by tribes and by the Bureau of Indian Affairs (BIA). The project will be for a three-year period and will be carried out in conjunction with the NIC Jails Division. The awardee will work closely with NIC staff on all aspects of the project.

To be considered, the applicant team collectively must have, at a minimum, (1) In-depth knowledge of the purpose, functions, and operational complexities of jails, (2) experience in working with Indian Country jails, (3) in-depth knowledge of the key elements of jail administration, as taught in NIC's Jail Administration training program, (4) expertise and experience with jail standards and inspections, (5) expertise and experience in conducting jail staffing analyses, and (6) experience in conducting training programs based on adult learning principles, specifically the Instructional Theory Into Practice (ITIP) model. The applicant team must include a curriculum specialist with expertise and experience in ITIP. The curriculum specialist will have a significant role in developing, reviewing, and revising the curriculum for the Jail Administration training program, as specified under ''Scope of Work.''

DATES: Applications must be received by 4 p.m. (EDT) on Friday, August 12, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at NIC is sometimes delayed due to security screening.

Applicants who wish to hand-deliver their applications should bring them to 500 First Street, NW., Washington, DC 20534, and dial 202–307–3106, ext. 0, at the front desk for pickup.

Faxed or e-mailed applications will not be accepted. Electronic applications can be submitted only via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and Links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperativeagreements.*

Questions about this project and the application procedures should be directed to Ginny Hutchinson, Jails Division Chief, National Institute of Corrections. Questions must be sent via e-mail to Ms. Hutchinson at *vhutchinson@bop.gov.* Ms. Hutchinson will respond via e-mail to the individual. Also, all questions and responses will be posted on NIC's Web site at *http://www.nicic.gov* for public review. (The names of those submitting the questions will not be posted.) The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation.

SUPPLEMENTARY INFORMATION:

Background: The NIC Jails Division offers technical assistance, training, and information to jails nationwide, including Indian Country jails. NIC now wishes to target training and related services to Indian Country needs on jail administration, staffing analysis, and

jail standards and inspection (specifically, peer review).

Services related to staffing analysis and jail administration will be based on NIC's existing materials, with adjustments made to accommodate any unique circumstances in Indian Country jails. The following reference materials are posted with this announcement on NIC's Web site: The Staffing Analysis Workbook for Jails, 2nd edition and the lesson plans and participant manual for the Jail Administration training program.

Scope of Work

Service #1: Jail Administration Training Program

Initial Review and Revision: The awardee will review and become familiar with the current curriculum. The awardee will discuss any questions with NIC staff.

The project director and curriculum specialist will meet with NIC staff, BIA staff, and up to 3 Indian Country jail administrators for up to 2 days in Washington, DC. The jail administrators will be identified jointly by NIC and BIA. NIC will pay the jail administrators' travel, lodging, and meal expenses. The BIA will pay travel, lodging, and meal expenses for its staff. The awardee will pay travel, lodging, and meal expenses for the project director and curriculum specialist.

Meeting participants will review the existing curriculum and identify content that does not apply to Indian Country jails and content that can be revised to be made applicable. NIC does not intend to develop a new program, nor does it intend to greatly change the basic program, which, based on past experience, is mostly relevant to Indian Country. However, NIC does expect that some revision will be necessary.

The awardee will revise the curriculum based on the results of the meeting, ensuring that all lesson plans conform to the ITIP model. The awardee will also develop an end-of-program participant evaluation, and will submit the revised curriculum and the evaluation to NIC for review and approval before conducting the program.

Initial Program Delivery: The awardee will conduct the revised Jail Administration training program, and the project director and curriculum specialist will attend. During the initial program, the project director and curriculum specialist will assess the program for any further revision needed.

The program will be up to 5 days long and will be conducted in a location central to most Indian Country jails, with a major airport nearby (no more than a 60-minute shuttle ride from the training site). There will be 3 trainers for the program. In the response to this solicitation, the applicant must identify a group of trainers who have given written assurance of their availability to teach, along with their qualifications. NIC does not require that the same 3 trainers conduct all programs.

There will be up to 30 participants in the program, including up to 4 persons identified by BIA as future trainers for the program. NIC will work with BIA to solicit applications and select participants. Participants will apply for the program through NIC.

The awardee will secure and pay for lodging and meals for the participants. Participants should be housed in single rooms. Meals will include dinner on the day of arrival and three meals for each of 5 full training days. NIC will pay for the participants' airfare or their mileage, if they choose to drive their personal vehicles.

The awardee will also secure and pay for training space (main room plus up to 3 breakout rooms); training equipment and supplies (such as equipment needed for slide presentations, chart pads and stands, chart markers, pens and paper for participants, masking tape, and other miscellaneous items); and refreshments (coffee, tea, juice, and soda). The main training room must easily accommodate 30 participant seats arranged in clusters of 6 around circular or rectangular tables, with a chart pad and stand at each table. Each table should provide sufficient space for the participants' manuals and other materials, with ample space to write. The main training room must also accommodate a large rectangular table for the trainers and space for the training equipment. Finally, it should be arranged so that trainers can easily move among the participant tables.

The awardee will hire and pay fees and expenses for 3 trainers, the project director, and the curriculum specialist, all of whom will stay for the entire program. If qualified, the project director may be included as one of the 3 trainers.

The awardee will print the participant manuals, instructor manuals, evaluation forms, and all other materials for the program, and assume the cost of printing. *Additional Revision:* Based on the assessment of the first program, the awardee will further revise the training program to ensure its applicability to Indian Country jails and conformity to the ITIP model. All draft revisions must be sent to NIC for review and approval before the second program is conducted.

Additional Program Delivery: The awardee will conduct the Jail Administration training program 3 more times during the course of the cooperative agreement. See ''Initial Program Delivery'' for the awardee's responsibilities. Note that the curriculum specialist is not required to attend all three of these programs. The applicant should, however, plan for the curriculum specialist to attend at least one of the programs in case there is need for his/her expertise.

Final Materials: The awardee will deliver a full curriculum, including a program description (overview); detailed narrative lesson plans; presentation slides for each lesson plan; a participant manual that follows the lesson plans; and other training materials as identified through this project. The curriculum will be designed according to the ITIP model for adult learners. Lesson plans will be in a format that NIC provides. Materials must be proofread and edited for grammar, spelling, punctuation, formatting, and clarity. The awardee will deliver all materials in hard copy (2) and on a disk (2). The awardee must ensure that all products meet NIC's standards for accessibility and Section 508 compliance.

BIA Trainer Development: NIC intends to share the completed curriculum with BIA for its use in training jail administrators. As noted above, the BIA will identify potential trainers who will attend the programs conducted under this cooperative agreement. The first time these potential trainers attend, they will observe the program. The second time, the awardee will give them limited responsibility, such as facilitating small groups. The third and fourth times, the awardee will give them training assignments so they are better prepared to instruct on their own. Even though they will gradually assume some training responsibilities, they are considered participants in each of the 4 programs for funding purposes.

Attendance at a BIA-Conducted Program: The awardee will send two members of the cooperative agreement's training team to the first Jail Administration program conducted by BIA. This program will most likely be held at the Indian Police Academy in Artesia, New Mexico. The awardee will pay fees and expenses for these trainers. Their role will be to provide assistance and feedback as needed to the BIA trainers.

Service #2: Staffing Analysis

Workshop: The awardee will conduct one workshop on staffing analysis for up to 12 BIA staff. This will be based on

NIC's ''Staffing Analysis Workbook for Jails, 2nd edition,'' and will last up to 3 days. The workshop will include staffing analysis for operating jails and for jails in various stages of planning. The workshop will focus not only on the staffing analysis process, but also on effectively presenting the results to the funding authority.

The purpose of this workshop is to develop a cadre of BIA staff who can conduct staffing analyses for jails and prepare staffing reports and justifications. These BIA staff could also help jail staff conduct their own staffing analyses.

The awardee will confer with NIC and BIA staff on workshop development, either in person or through conference calls or online meetings. The awardee will then develop the lesson plans, presentation slides, and participant materials, and send these materials to NIC for review and approval before conducting the workshop.

After the workshop, the awardee will submit final copies of all materials, with a participant list, to NIC. These materials will be submitted on a disk.

The awardee will pay fees and expenses for 2 trainers. These trainers will be identified jointly by NIC and the awardee after the cooperative agreement is awarded. The awardee will print all workshop materials and assume the cost for printing. BIA will supply the necessary room and equipment for the workshop, and assume costs related to the participants' travel, lodging, and meals.

Additional Assistance: Once the workshop is completed, the awardee will send one trainer to accompany BIA staff in conducting a staffing analysis for up to 3 jails or new-jail planning projects identified by the BIA. The trainer will provide guidance and support as needed to the BIA staff, but will not conduct the staffing analysis or write the report. The awardee will pay fees and expenses for the trainer assigned to each staffing analysis. The BIA will cover expenses for its staff.

Service #3: Jail Standards and Inspection (Peer Review)

Based on standards it has adopted, BIA has a formal inspection process, but it also wishes to develop a peer review process. The awardee will work with BIA and NIC staff to develop a peer review protocol, with related forms and other materials.

The awardee will then develop and conduct one workshop on the peer review process, and submit all workshop materials to NIC for review and approval before the program is conducted.

After the workshop, the awardee will submit final copies of all materials, with a participant list, to NIC. These materials will be submitted on a disk.

The workshop will last up to 5 days and will be conducted by 2 to 3 trainers. These trainers will be identified jointly by NIC and the awardee after the cooperative agreement is awarded. BIA will identify up to 15 participants for this program.

The workshop will combine classroom sessions with practical exercises inside an Indian Country jail. BIA and NIC will identify a jail willing to allow participants to practice conducting a review.

The classroom sessions will be held in a suitable room inside the jail or, if no room is available, at a site within short driving distance to the jail. The awardee should not assume a room will be available in the jail and should plan to pay for a room at a hotel for the workshop, in addition to related equipment and supplies.

The awardee will pay all fees and expenses for the trainers. The awardee will also print all workshop materials and assume the cost.

The awardee will secure a hotel for the participants' lodging and will arrange for meals to be provided by the hotel, including dinner on the day of arrival and 3 meals for each full training day. The awardee will assume the cost of the participants' lodging and meals at this site. Participants should be lodged in single rooms.

NIC will pay for participants' travel. BIA will arrange for transportation between the hotel and the jail, if needed.

Project Kick-Off Meeting

The project director will attend an initial meeting in Washington, DC with NIC staff for a project overview and preliminary planning. The meeting will last up to two days. The awardee will pay the project director's fees and expenses for this meeting.

Project Timelines

The applicant must plan project activities based on several considerations. First, the staffing analysis workshop should be conducted during the first year of the cooperative agreement period. Second, the awardee will assist BIA staff in conducting three staffing analysis projects within 3 months or less after the workshop. Third, the Jail Administration training program should be conducted once during the first year, twice during the second year, and once during the third year. Fourth, BIA will conduct Jail Administration during the third year, with assistance from the awardee. Fifth, work on the peer review process for standards compliance should begin before the end of the first year of the cooperative agreement. Finally, project timelines must include provision for submission of materials to NIC for review and approval, as specified in this solicitation.

Application Requirements: An application package must include OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (*e.g.,* July 1 through June 30); and an outline of projected costs with the budget and strategy narratives described in this announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*.)

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *http://www.grants.gov*.

The narrative portion of the application should include, at a minimum: a brief paragraph indicating the applicant's understanding of the project's purpose; a brief paragraph that summarizes the project goals and objectives; a clear description of the methodology that will be used to complete the project and achieve its goals; a statement or chart of measurable project milestones and timelines for the completion of each milestone; a description of the qualifications of the applicant organization; a resume for the principle and each staff member assigned to the project (including instructors) that documents relevant knowledge, skills, and abilities to carry out the project; and a budget that details all costs for the project, shows consideration for all contingencies for

the project, and notes a commitment to work within the proposed budget.

In addition to the narrative and attachments, the applicant must submit two full sample curricula developed by the primary curriculum developer named in the application. For each sample curriculum, the applicant must submit lesson plans, presentation slides, and a participant manual.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The funding amount should not exceed $500,000.

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows:

Project Design and Management: Is there a clear understanding of the purpose of the project and the nature and scope of project activities? Does the applicant give a clear and complete description of all work to be performed for this project? Does the applicant clearly describe a work plan, including objectives, tasks, and milestones necessary to project completion? Are the objectives, tasks, and milestones realistic and will they achieve the project as described in NIC's solicitation for this cooperative agreement? Are the roles and the time required of project staff clearly defined? Is the applicant willing to meet with NIC staff, at a minimum, as specified in the solicitation for this cooperative agreement?

Applicant Organization and Project Staff Background: Is there a description of the background and expertise of all project personnel as they relate to this project? Is the applicant capable of managing this project? Does the applicant have an established reputation or skill that makes the applicant particularly well qualified for the project? Do primary project personnel, individually or collectively, have in-depth knowledge of the purpose, functions, and operational complexities of local jails? Do the primary project personnel, individually or collectively, have expertise and experience specified in the ''Summary'' section of this Request for Proposal? Does the staffing plan propose sufficient and realistic time commitments from key personnel? Are there written commitments from proposed staff that they will be available to work on the project as described in the application?

Budget: Does the application provide adequate cost detail to support the proposed budget? Are potential budget contingencies included? Does the application include a chart that aligns the budget with project activities along a timeline with, at a minimum, quarterly benchmarks? In terms of program value, is the estimated cost reasonable in relation to work performed and project products?

Sample Curricula: Do the sample curricula include all components specified in the RFP (lesson plans, presentation slides, and participant manual)? Are the lesson plans designed according to the ITIP model? Does each lesson plan have performance objectives that describe what the participants will accomplish during the module? Are the lesson plans detailed, clear, and well written (spelling, grammar, punctuation)? Is the participant manual clear, and does it follow the lesson plans? Do the presentation slides effectively illustrate information in the lesson plans? Do the presentation slides have a professional appearance, and can they be easily read from a distance of 30 to 40 feet?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). Applicants can obtain a DUNS number at no cost by called the dedicated toll-free DUNS number request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site at *http://www.ccr.gov*. Applicants can also review a CCR handbook and worksheet at this Web site.

Number of Awards: One.

NIC Opportunity Number: 11JA06. This number should appear as a reference line in the cover letter, where the opportunity number is requested on Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601

Executive Order 12372: This project is not subject to the provisions of the executive order.

Thomas J. Beauclair,

Deputy Director, National Institute of Corrections.

[FR Doc. 2011–18614 Filed 7–22–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respiratory Protection Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Respiratory Protection Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 24, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Respiratory Protection Standard outlined in 29 CFR 1910.134 assists employers in protecting the health of workers exposed to airborne

contaminants, physical hazards, and biological agents. The Standard contains requirements for program administration; a written respirator-protection program with worksite-specific procedures; respirator selection; worker training; fit testing; medical evaluation; respirator use; respirator cleaning, maintenance, and repair; and other provisions.

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 1218–0099. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 14, 2011 (76 FR 13668).

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 1205–0268. The OMB is particularly interested in comments that:

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

Agency: Occupational Safety and Health Administration (OSHA).

Title of Collection: Respiratory Protection Standard.

OMB Control Number: 1218–0099.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 618,804.

Total Estimated Number of Responses: 21,486,375.

Total Estimated Annual Burden Hours: 6,801,711.

Total Estimated Annual Other Costs Burden: $185,578,935.

Dated: July 19, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–18602 Filed 7–22–11; 8:45 am]

BILLING CODE 4510–26–P

MERIT SYSTEMS PROTECTION BOARD

Notice of Opportunity To File Amicus Briefs

AGENCY: Merit Systems Protection Board (MSPB or Board).

ACTION: Notice.

SUMMARY: The Board announces the opportunity to file amicus briefs in the matters of James C. Latham v. U.S. Postal Service, MSPB Docket Number DA–0353–10–0408–I–1, Ruby N. Turner v. U.S. Postal Service, MSPB Docket Number SF–0353–10–0329–I–1, *Arleather Reaves* v. *U.S. Postal Service,* MSPB Docket Number CH–0353–10–0823–I–1, Cynthia E. Lundy v. U.S. Postal Service, MSPB Docket Number AT–0353–11–0369–I–1, and *Marcella Albright* v. *U.S. Postal Service,* MSPB Docket Number DC–0752–11–0196–I–1.

The Office of Personnel Management's regulation at 5 CFR 353.301(d) requires the agency to ''make every effort'' to restore a partially recovered employee to limited duty within the local commuting area. The regulation explains that ''[a]t a minimum, this would mean treating these employees substantially the same as other [disabled] individuals under the Rehabilitation Act of 1973.'' The Board has interpreted this regulation as requiring agencies to search within the local commuting area for vacant positions to which an agency can restore a partially recovered employee and to consider the employee for any such vacancies. *Sanchez* v. *U.S. Postal Service,* 114 M.S.P.R. 345, ¶ 12 (2010) (citing *Sapp* v. *U.S. Postal Service,* 73 M.S.P.R. 189, 193–94 (1997)). Conversely, the Board has found that this regulation does not require an agency to assign a partially recovered employee limited duties that do not comprise the essential functions of a complete and separate position. *Brunton* v. *U.S. Postal Service,* 114 M.S.P.R. 365, ¶ 14 (2010) (citing *Taber* v. *Department of the Air Force,* 112 M.S.P.R. 124, ¶ 14 (2009)).

However, it appears that the U.S. Postal Service may have established an agency-specific rule providing partially recovered employees with greater restoration rights than the ''minimum'' rights described in 5 CFR 353.301(d). *See generally Drumheller* v. *Department of the Army,* 49 F.3d 1566, 1574 (Fed. Cir. 1995) (agencies are required to follow their own regulations). Specifically, the U.S. Postal Service's Employee and Labor Relations Manual (ELM) § 546.142(a) requires the agency to ''make every effort toward assigning [a partially recovered current employee] to limited duty consistent with the employee's medically defined work limitation tolerance.'' One of the appellants has submitted evidence to show that U.S. Postal Service Handbook EL–505, Injury Compensation §§ 7.1–7.2 provides that limited duty assignments ''are designed to accommodate injured employees who are temporarily unable to perform their regular functions'' and consist of whatever available tasks the agency can identify for partially recovered individuals to perform consistent with their medical restrictions. *Latham* v. *U.S. Postal Service,* MSPB Docket No. DA–0353–10–0408–I–1, Initial Appeal File, Tab 21, Subtab 7. It therefore appears that the agency may have committed to providing medically suitable work to partially recovered employees regardless of whether that work comprises the essential functions of a complete and separate position. Indeed, the Board is aware of one arbitration decision explaining that, as a product of collective bargaining, the agency revised the ELM in 1979 to afford partially recovered employees the right to restoration to ''limited duty'' rather than to ''established jobs.'' *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers,* Case No. E06N–4E–C 09370199, 16 (2010) (Eisenmenger, Arb.). The Board is also aware of a large number of other recent cases challenging the discontinuation of limited duty assignments under the National Reassessment Process in which the arbitrators ruled in favor of the grievants

on the basis that the agency's actions violated the ELM. *E.g., In re Arbitration between U.S. Postal Service and National Association of Letter Carriers*, Case No. G06N–4G–C 10205542 (2011) (Sherman, Arb.); *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers,* Case No. E06N–4E–C 09419348 (2010) (Duffy, Arb.); *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers,* Case No. F06N–4F–C 09221797 (2010) (Monat, Arb.); *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers*, Case No. B01N–4B–C 06189348 (2010) (LaLonde, Arb.).

The appellants in the above-captioned appeals have all raised similar arguments before the Board pertaining to alleged violations of their restoration rights under the ELM. The Board, however, has not yet addressed the implications of ELM § 546.142(a) on restoration appeals of partially recovered U.S. Postal Service employees under 5 CFR 353.304(c).

The above-captioned appeals thus present the following legal issues: (1) May a denial of restoration be ''arbitrary and capricious'' within the meaning 5 CFR 353.304(c) solely for being in violation of the ELM, *i.e.*, may the Board have jurisdiction over a restoration appeal under that section merely on the basis that the denial of restoration violated the agency's own internal rules; and (2) what is the extent of the agency's restoration obligation under the ELM, *i.e.*, under what circumstances does the ELM require the agency to offer a given task to a given partially recovered employee as limited duty work?

Interested parties may submit amicus briefs or other comments on these issues no later than August 24, 2011. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 30 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½ by 11 inch paper with one inch margins on all four sides.

DATES: All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before August 24, 2011.

ADDRESSES: All briefs shall be captioned ''*James C. Latham, et al.* v. *U.S. Postal Service*'' and entitled ''Amicus Brief.'' Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon, Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; *mspb@mspb.gov*.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2011–18647 Filed 7–22–11; 8:45 am]

BILLING CODE 7400–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–06394; NRC–2008–0523]

Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License; Department of the Army

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Telephone: 610–337–5366; fax number: 610–337–5269; e-mail: *Dennis.Lawyer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SMB–141. This license is held by the Department of the Army, U.S. Army Research, Development and Engineering Command (ARDEC), Army Research Laboratory (ARL) (the Licensee), for its U.S. Army Research Laboratory facility (the Facility) located at the Aberdeen Proving Ground (APG), Maryland. Issuance of the amendment would authorize release of a portion of the Facility, specifically the Building 1103A area, for unrestricted use. The Licensee requested this action in a letter dated March 31, 2010. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register.**

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's March 31, 2010, license amendment request, resulting in release of the Building 1103A area for unrestricted use. License No. SMB–141 was issued on April 12, 1961, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to use uranium and thorium for purposes of conducting research and development activities; fabrication, modification, and testing of components, parts, and/or devices; and munitions testing.

The Building 1103A area is a former radioactive material processing and storage facility on Spesutie Island at APG. Historical activities at the Building 1103A area involved the unloading of depleted uranium contaminated targets in a central asphalt area; storage and staging of the targets in one of three vaults; cutting and machining of the targets; and storage and reloading of the resulting steel pieces in preparation for decontamination, disposal, or reuse. The Building 1103A area occupies an area of about 36,600 square feet, of which 7,000 square feet is comprised of buildings.

In August 2009, the Licensee ceased licensed activities at the Building 1103A area and initiated a survey and decontamination of the Building 1103A area. Based on the Licensee's historical knowledge of the site and the conditions of the Building 1103A area, the Licensee determined that a decommissioning plan was required. The decommissioning plan was submitted and was approved in License Amendment #30, issued on November 20, 2008, (Agencywide Document Access and Management System [ADAMS] Accession No. ML083260281). In accordance with their NRC-approved decommissioning plan (ADAMS Accession Numbers ML081550541, ML081550549, ML081550553, ML081550557, and ML081550561), the Licensee performed cleanup activities. The Licensee then conducted surveys of the Building 1103A Area and provided information to the NRC to demonstrate that the Building 1103A Area meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Building 1103A area, and seeks the unrestricted use of the Building 1103A area.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Building 1103A area shows that such activities involved use of depleted uranium radionuclides with half-lives greater than 120 days. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Building 1103A area affected by these radionuclides.

The Licensee conducted a final status survey during the period of September 2009 through December 2009, August 2010, and December 2010. This survey covered all of the Building 1103A area including soil and building areas. The final status survey report was attached to the Licensee's letter dated, February 17, 2011 (ADAMS Accession Number ML110630042). The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release of buildings as specified in 10 CFR 20.1402 by developing derived concentration guideline levels (DCGLs) for the Building 1103A area. The Licensee conducted site-specific dose modeling using input parameters specific to the Building 1103A area. Specifically, the site specific ratio of uranium-234, uranium-235, and uranium-238 was used along with NRC and U.S. Environmental Protection Agency modeling data. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces, equipment, materials and soils that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The NRC reviewed the Licensee's methodology and proposed DCGLs, and concluded that the proposed DCGLs are acceptable for use as release criteria at the Building 1103A area. The Licensee's final status survey results were below these DCGLs and are thus acceptable.

The environmental impacts considered are to people residing on the site after decommissioning and, therefore, subject to radiation exposure principally caused by residual radioactivity in soil; impacts to people working in site buildings after decommissioning and therefore subject to radiation exposure principally caused by residual radioactivity on building surfaces impacts; and impacts to plant and animal populations after decommissioning and therefore subject to radiation exposure principally caused by residual radioactivity in soil. These same impacts were reviewed by and evaluated by NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking (GEIS) on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities,'' Volumes 1–3 (ADAMS Accession Numbers ML042310492, ML042320379, and ML042330385]. Specifically, section 2.4.3.2 on page 2–9 of the GEIS Volume 1 lists these impacts and others that were evaluated for non-fuel cycle nuclear material facilities. The GEIS also states that the types of facilities which are included in the analysis include non-fuel cycle nuclear material facilities as stated in section 3.2.1 starting on page 3–1 of Volume 1.

Based on its review, the NRC staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the GEIS. Because the GEIS found that there were no significant impacts for the non-fuel cycle nuclear material facilities, which would include the Building 1103A area, the staff finds there were no significant environmental impacts from the use of radioactive material at the Building 1103A area. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Building 1103A area. No such hazards or impacts to the environment were identified. The NRC staff has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Building 1103A area described above for unrestricted use is in compliance with 10 CFR 20.1402. Although the Licensee will continue to perform licensed activities at the Facility, the Licensee must ensure that this decommissioned area, the Building 1103A area, does not become re-contaminated. In connection with the eventual termination of License No. SMB–141, the Licensee will be required to show that all licensed areas and previously-released areas at the Facility comply with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Building 1103A area and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small and are bounded by the GEIS. Therefore, the only alternative the NRC staff considered is the no-action alternative, under which the staff would deny the amendment request and leave things as they currently exists. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42, requiring that decommissioning of separate buildings or outdoor areas at source material facilities be completed and approved by the NRC after licensed activities there cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Building 1103A area meets the requirements of 10 CFR 20.1402 for unrestricted release and the NRC has no reason not to approve release of the Building 1103A area. Additionally, denying the amendment request would result in no change of the environmental impacts between the alternate and the proposed action. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402 and that the proposed action will not significantly impact the quality of the human environment.

Agencies and Persons Consulted

NRC provided a draft of this EA to the Maryland Department of the Environment (MDE) Air and Radiation Management Administration and Land Management Administration for review on March 17, 2011. On April 20, 2011, the MDE responded by electronic mail. The MDE agreed with the conclusions of the EA and otherwise had no technical comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental

impact statement is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's ADAMS, which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Amendment Request Letter dated March 31, 2010 (ML101170783);
2. Final Status Survey Report dated March 2010 (ML101180233), (ML101180244), (ML101180276), (ML101180281);
3. Letter dated July 15, 2010 (ML102030110);
4. Letter dated September 27, 2010 (ML103280172);
5. Final Status Survey Report Revision 1 September 2010 (ML103280196), (ML103280205), (ML103280235), (ML103280252), (ML103280264), (ML103280270), (ML103280465), (ML103280475), (ML103280468);
6. Letter dated February 17, 2011 (ML110630042);
7. Final Status Survey Report Revision 2, dated January 2011 (ML110630049), (ML110630443), (ML110630528), (ML110630524), (ML110630444), (ML110630428);
8. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance'';
9. Title 10, Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination'';
10. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions''; and
11. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 12th day of July 2011.

For The Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2011–18758 Filed 7–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271, NRC–2011–0168]

Vermont Yankee Nuclear Power Station; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of Vermont Yankee Nuclear Power Station (the licensee) to withdraw its August 19, 2010, application for proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont.

The proposed amendment would have revised the Technical Specifications to be consistent with Standard Technical Specifications 3.6.1.8 ''Suppression Chamber-to-Drywell Vacuum Breakers'' and 3.6.2.5 ''Drywell-to-Suppression Chamber Differential Pressure,'' along with the associated Bases, of NUREG–1433, Revision 3, ''Standard Technical Specifications General Electric Plants, BWR/4,'' modified to account for plant specific design details.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 5, 2010 (75 FR 61525). However, by letter dated July 7, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 19, 2010 (Agencywide Documents and Access and Management System (ADAMS) Accession No. ML102360042), and the licensee's letter dated July 7, 2011 (Accession No. ML11193A009), which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 18th day of July 2011.

For the Nuclear Regulatory Commission.

James Kim,

Project Manager, Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–18757 Filed 7–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on U.S. Advanced Pressurized Water Reactor; Notice of Meeting

The ACRS Subcommittee on U.S. Advanced Pressurized Water Reactor (US–APWR) will hold a meeting on August 17, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 17, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will review Chapter 10, ''Steam and Power Conversion System, of the'' Safety Evaluation Report (SER) associated with the US–APWR design certification and Chapter 8, ''Electric Power,'' of the SER associated with the Comanche Peak Reference Combined License Application (RCOLA). The Subcommittee will hear presentations by and hold discussions with the NRC staff, Luminant Generation Company LLC, Mitsubishi Heavy Industries, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179 or E-mail: *Ilka.Berrios@nrc.gov*) five days prior to the meeting, if possible, so that

appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Jonah Fitz (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: July 18, 2011.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–18724 Filed 7–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on August 16, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance except for a portion that may be closed to protect information provided in confidence by a foreign source pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, August 16, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review the NRC near-term task force review of the events at the Fukushima Dai-Ichi reactor site in Japan. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or E-mail: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Jonah Fitz (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: July 19, 2011.

Cayetano Santos,

Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–18764 Filed 7–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on AP1000; Notice of Meeting

The ACRS Subcommittee on AP1000 will hold a meeting on August 16, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception for portions that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, August 16, 2011–1 p.m. until 5 p.m.

The Subcommittee will review technical updates in Revision 19 to the AP1000 Design Control Document (DCD). The Subcommittee will hear presentations by and hold discussions with the NRC staff, Westinghouse, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Weidong Wang (Telephone 301–415–6279 or e-mail: *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Jonah Fitz (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: July 18, 2011.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–18766 Filed 7–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on August 18, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, August 18, 2011—1 p.m. Until 5 p.m.

The Subcommittee will review the NRC staff's Draft Final Regulatory Guide (RG) 1.221, ''Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants,'' and supporting documents RG 1.76, Revision 1, ''Design-Basis Tornado and Tornado Missiles for Nuclear Power Plants''; NUREG/CR–7005, ''Technical Basis for Regulatory Guidance on Design-Basis Hurricane Windspeeds for Nuclear Power Plants''; NUREG/CR–4461, Revision 2, ''Tornado Climatology of the Contiguous United States, and NUREG/CR–7004, ''Technical Basis for Regulatory Guidance on Design-Basis Hurricane-Borne Missile Speeds for Nuclear Power Plants.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone: 301–415–6855 or e-mail: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Jonah Fitz (Telephone: 301–415–7360) to be escorted to the meeting room.

Dated: July 18, 2011.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–18771 Filed 7–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0209]

Policy Statement of the U.S. Nuclear Regulatory Commission on the Protection of Cesium-137 Chloride Sources

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing a statement of policy on the protection of cesium-137 chloride (CsCl) sources. This statement sets forth the Commission's policy regarding secure uses of these sources at the present and states the Commission's readiness to respond with additional security requirements, if needed, should the threat environment change. The purpose of this policy statement is to delineate the Commission's expectations for security and safety of these sources.

DATES: This policy statement is effective July 25, 2011.

ADDRESSES: You can access publicly available documents related to this document 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.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this policy statement can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0209. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. John P. Jankovich, Office of Federal and State Materials and Environmental Management Programs, telephone: 301–415–7904, e-mail:

John.Jankovich@nrc.gov, or Dr. Cynthia G. Jones, Office of Nuclear Security and Incident Response, telephone: 301–415–0298, e-mail: *Cynthia.Jones@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Certain radioactive sources, including CsCl sources, have been identified by the International Atomic Energy Agency (IAEA) *Code of Conduct on the Safety and Security of Radioactive Sources* (Code of Conduct) (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*) as sources that may pose a significant risk to individuals, society, and the environment if improperly handled or used in a malicious act. Consequently, the NRC has required additional security measures for Category 1 and 2 sources and considers it prudent to express its views on the safe and secure use of CsCl sources. The CsCl sealed sources are used in many applications that have significant societal benefits, most commonly in irradiators, calibrators, and in devices for biological and medical research.

To develop its draft policy statement, the NRC initiated and completed a number of initiatives. A significant element of these initiatives was an Issue Paper which was published in the **Federal Register** on July 31, 2008 (73 FR 44780), and discussed with stakeholders in a public workshop held on September 29–30, 2008. The NRC also received numerous written comments on the Issues Paper. The oral and written comments as well as the transcript of the workshop, along with other relevant information, are accessible at *http://www.nrc.gov/materials/miau/licensing.html#cesium.* A study [1] on the use and replacement of radiation sources, conducted by the National Research Council of the National Academies in 2008, recommended eliminating Category 1 and 2 CsCl sources from use in the United States and to the extent possible elsewhere. The National Research Council also recommended that replacement of some sources with alternatives should be implemented with caution, ensuring that essential functions that the sources perform are preserved.

The NRC prepared a draft policy statement, which described issues related to safety and security associated with IAEA Category 1 and 2 CsCl sources [2]. The Draft Policy Statement was published for public comment in the **Federal Register** on June 29, 2010 (75 FR 37483). The intent of this document was to foster discussion about these issues and to solicit comments on the draft policy statement. The NRC held a public meeting on November 8–9, 2010, to solicit comments on the Draft Policy Statement. The public meeting was announced in the **Federal Register** on September 29, 2010 (75 FR 60149), as well as in two NRC press releases issued June 28, 2010 (No. 10–117), and October 5, 2010 (No. 10–176). The public meeting included technical sessions with panel presentations, followed by facilitated discussion with the audience. The meeting was attended by the general public and representatives of licensees (users in the blood irradiation industry, biomedical research institutions, the pharmaceutical industry, and calibration laboratories), health and industry associations, source and device manufacturers, manufacturers of alternate technologies (x-ray and cobalt-60), and Federal and State government agencies. The NRC developed a public Web site, *http://www.nrc.gov/materials/miau/licensing.html#cc*, to make documents accessible relevant to the draft policy statement and to the public meeting.

The NRC received written comments and a number of oral comments from the panelists and the audience at the public meeting. The majority of the comments supported the Draft Policy Statement. Many commenters recommended expanding the narrative regarding the areas of use of CsCl sources, as well as recommendations to clarify statements in the policy. The comments and the submissions provided valuable information for the formulation of this Policy Statement regarding the use of CsCl sources, security issues, and the diversity of impacts that licensees could experience as a result of potential further regulatory requirements. In addition, there were recommendations to include the IAEA Category 3 CsCl sources in certain selected types of use. All of the written and oral comments were considered when finalizing the Policy Statement [3]. None of the comments resulted in changes to the basic principles that are in the Policy Statement. The changes to the Draft Policy Statement are limited. In response to public comments, the Policy Statement contains expanded discussions of the use of CsCl sources in addition to clarifications. Changes were also made to address the new developments including issuance of the Radiation Source Protection and Security Task Force's (Task Force) quadrennial report (Task Force Report) and its implementation plan, and publication of the draft environmental impact statement by the U.S. Department of Energy (DOE).

In August 2010, the Task Force completed its quadrennial Task Force Report to the President and Congress (ADAMS Accession No. ML102230141). The Task Force Report addressed the security of all radioactive sources, but singled out the issue of CsCl sources in several of the recommendations. As a follow-up to the Task Force Report, the NRC developed an implementation plan for the Task Force Report (ADAMS Accession No. ML103050432) in December 2010. The NRC implementation plan defined the recommendations as tasks to be completed by the Task Force within the framework of their upcoming activities including the issue of CsCl sources. The Policy Statement is consistent with the conclusions and the recommendations of the Task Force Report.

Disposal of CsCl sources is addressed in the Policy Statement. Regarding disposal of radioactive materials, the DOE published, in February 2011, for public comment a ''Draft Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC–Like Waste'' (see *http://nepa.energy.gov/1653.htm*). The Draft Environmental Impact Statement (DEIS) includes proposals for resolution of disposal issues for sealed sources, including CsCl sources. The Policy Statement recognizes the DOE's issuance of the DEIS and expresses the Commission's intent to monitor the DOE as it makes a decision on a GTCC disposal facility which will require an NRC license.

II. Policy Statement of the U.S. Nuclear Regulatory Commission on the Protection of Cesium-137 Chloride Sources

Statement of Policy

The NRC issues this Policy Statement to set forth its policy on the secure uses of sealed sources containing CsCl and to describe potential Commission actions if changes in the security threat environment necessitate regulatory action. The Policy Statement also delineates the Commission's

[1] National Research Council of the National Academies, ''Radiation Source Use and Replacement,'' The National Academies Press, Washington, DC, *http://www.nap.org.*

[2] An IAEA Category 1 cesium-137 source contains a minimum of 3000 Ci (100 TBq) and a Category 2 source contains a minimum of 30 Ci (1 TBq). See *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf.*

[3] *See* Summary of Comments on the CsCl Draft Policy Statement and Staff Resolutions (ADAMS Accession No. ML110750506).

expectations for the secure and safe use of CsCl sources with activity levels of Category 1 and 2 as characterized by the IAEA Code of Conduct.

It is the policy of the Commission that its mission of ensuring adequate protection of public health and safety, common defense and security, and the environment while enabling the use of radioactive materials for beneficial civilian purposes is best accomplished with respect to CsCl by implementing or promoting the following principles:

- The safety and security of IAEA Category 1 and 2 sources is an essential part of the NRC's mission;
- Licensees have the primary responsibility to securely manage and to protect sources in their possession from misuse, theft, and radiological sabotage;
- Adequate protection of public health and safety is maintained if CsCl sources are managed in accordance with the safety and security requirements of the NRC and the Agreement States.[4] These requirements are based on vulnerability assessments of the various sources and follow the principles of the IAEA Code of Conduct;
- While these sources are adequately protected under the current NRC requirements, design improvements could be made that further mitigate or minimize the radiological consequences;
- The development and use of alternative forms of cesium-137 (Cs-137), while not required for adequate protection, are prudent and the NRC intends to monitor these developments closely. In addition, the NRC recognizes that objective measures of 'solubility' and 'dispersibility' may need to be clarified as alternate forms of Cs-137 are developed by manufacturers;
- The CsCl sources enable three specific classes of applications that benefit society: (a) Blood irradiation, (b) bio-medical and industrial research, and (c) calibration of instrumentation and dosimetry;
- The NRC recognizes that currently there is no disposal capability for such commercial sources. The NRC considers it imperative to develop a pathway for the long-term storage and disposal of these sources whether or not alternative forms are developed; and
- The NRC monitors the threat environment and maintains awareness of international and domestic security efforts. In the event that changes in the threat environment necessitate regulatory action, the NRC, in partnership with its Agreement States, would issue additional security requirements, if necessary, to apply appropriate limitations for the use of CsCl in its current form.

Security and Control of Radioactive Sources

Effective regulatory requirements and strong measures are currently in place for ensuring security and control of radioactive sources. After the terrorist events of September 11, 2001, the NRC and Agreement States issued security requirements mandating that licensees who possess IAEA Category 1 or 2 quantities of radioactive materials implement increased security and control measures to reduce the risk of malevolent use and intentional unauthorized access to radioactive material. The additional requirements enhanced and supplemented existing regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 20.1801, ''Security of Stored Material,'' and 10 CFR 20.1802, ''Control of Material Not in Storage,'' which are primarily intended to prevent or mitigate unintended exposure to radiation.

Current security requirements include access controls and background checks for personnel; monitoring, detecting and responding to unauthorized access; delay; advance coordination with local law enforcement; and the tracking of transfers and shipments. The security requirements require licensees to establish and implement trustworthiness and reliability standards to determine who will have unescorted access to the radioactive material. An individual's trustworthiness and reliability is based upon a background investigation. The NRC and Agreement States have jointly developed materials protection and security regulatory requirements that reflect the experience gained through implementation of existing requirements.

In addition, the NRC has implemented new regulatory requirements for import/export licensing and for reporting to the National Source Tracking System (NSTS), which increase accountability of Category 1 and 2 radioactive material transactions and help to ensure that such transactions are only made by authorized entities.[5] The NRC developed and maintains the NSTS, which provides information on sources from the time of manufacture through transportation and use to end-of-life disposition. The NSTS and other systems under development, such as the Web-Based Licensing and License Verification System which will permit verification of a license to possess radioactive sources, are key components of a comprehensive program for the security and control of radioactive materials. When complete, these systems will include information on all NRC, Agreement State, import/export licensees, and IAEA Category 1 and 2 radioactive sources.[6]

The measures described above are in place to ensure the security of all Category 1 and 2 radioactive sources, including CsCl sources. Over the past six years, these measures have reduced the vulnerability for malevolent use of radioactive sources, including CsCl sources. In addition, the NRC and Agreement States are supporting the DOE's National Nuclear Security Administration (NNSA) voluntary program to retrofit existing CsCl irradiators with additional physical security enhancements and to incorporate these improvements into the designs of newly manufactured units. These modifications extend beyond current regulatory requirements. These efforts are often complemented by assist visits and tabletop exercises by NNSA experts at licensee facilities that allow participants to share best practices.

The NRC and Agreement States also support the Federal Bureau of Investigation's ongoing Weapons of Mass Destruction (WMD) countermeasure effort to reach out to certain communities of licensees (including the CsCl irradiator licensee community). A critical aspect of this WMD countermeasure effort is information sharing through visits to licensees. These visits encourage communication and allow regulators, law enforcement, and licensees to gain an understanding of a licensee's security arrangements and how and when law enforcement would be engaged if there were a threat or a security event at a licensee's site.

To maintain security of sources, the Energy Policy Act of 2005 (EPAct) established the Task Force on Radiation Source Protection and Security to be chaired by the Chairperson of the Commission (or designee). The purpose of the Task Force is to evaluate and provide recommendations to the President and Congress periodically relating to the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiation

[4] Agreement States are those States that have entered into an agreement with the NRC to assume authority under Section 274b of the Atomic Energy Act of 1954, as amended, to license and regulate by-product materials (radioisotopes), source materials (uranium and thorium), and certain quantities of special nuclear materials.

[5] *See* 10 CFR 20.2207.

[6] *See http://www.nrc.gov/security/byproduct/nsts.html.*

source in a radiological dispersal device. The Task Force consists of representatives from 14 Federal agencies (11 of which were specified in the EPAct), the Organization of Agreement States, and the Conference of Radiation Control Program Directors. The Task Force issued its first report [7] in 2006 and its quadrennial report [8] in 2010. The 2010 Task Force Report, in a number of its recommendations, addressed the following issues associated with CsCl sources: export, end-of-life management, options for disposal, voluntary replacement with alternative technologies, and potential discontinuation of use of CsCl sources, contingent upon the viability of alternative technologies and consideration of the threat environment. The Task Force also developed a plan to implement the recommendations of the report. The NRC's policy for CsCl sources is consistent with the recommendations of the Task Force reports.

The NRC supports the security initiatives of international organizations (*e.g.,* IAEA), and other countries, as well as the initiatives of Federal agencies aimed to further increase the protection of IAEA Category 1 and 2 sources both domestically and overseas (*e.g.,* NNSA's Global Threat Reduction Initiative). The NRC participates in the development of such protective measures in various international forums and will consider their applicability for use within the United States if the threat environment changes, which could warrant additional protective security measures.

Uses of CsCl Sources

The CsCl sources comprise approximately 3 percent of the IAEA Category 1 and 2 sources in the United States. In comments at the public meetings and in written submissions, members of the medical and scientific communities stated that these CsCl sources are essential due to their applications in blood irradiation, bio-medical and industrial research, and calibration of instrumentation and dosimetry, especially for critical reactor and first responder equipment. The CsCl is used for these applications because of the properties of the nuclide Cs-137, including its desirable single energy spectrum (662 keV), long half-life, low cost, and moderate shielding requirements relative to other nuclides. The CsCl used in these applications is in a compressed powder form that is doubly-encapsulated in two stainless steel capsules to ensure safety and security in normal use. This physical form is used because of its high specific activity (gamma emission per unit volume) and manufacturability. However, the powder is highly soluble and potentially dispersible, which could present security concerns if not properly secured and used in a malevolent manner.

Blood irradiation is medically essential to prevent transfusion-associated Graft-Versus-Host disease and the vast majority of hospitals use only irradiated blood. The CsCl blood irradiators are used to irradiate over 90 percent of all irradiated blood because CsCl blood irradiators are the most reliable and efficient blood irradiation devices currently available.

In biomedical research, CsCl irradiation has been used for over 40 years in fields such as immunology, hematology, stem cell research, bone marrow transplantation, cancer research, in-vivo immunology, systemic drug research, chromosome aberrations, DNA damage/repair, human genome, and genetic factors. According to members of the medical community, the continuation of such research is crucial for advancing patient care, and for studies on medical countermeasures against radiation effects for the protection of the public, first responders and military personnel. For most research, there are no alternatives to Cs-137 irradiation because of the unique properties of Cs-137 radiation, such as high dose rates with uniform fields of linear energy transfer. No alternative technologies that can effectively replace CsCl sources for biomedical research have yet been developed. Based on decades of use, including trial use of certain x-ray machines for irradiation, the biomedical research community considers the Cs-137 irradiators optimal for providing effective, reliable, dependable, economical, and experimentally reproducible means of required health care equipment needed for research. According to the medical community, the results of previous research with Cs-137 irradiators cannot be compared to results obtained from other types of irradiation due to differences in the energy spectra and dose distribution of the radiation sources. Conversion factors between biomedical experimental results of x-ray versus gamma-rays do not exist. The use of alternative technologies would necessitate extensive research to re-validate research models of diseases that have already been established using irradiation devices containing Cs-137.

The national and international systems of radiation measurements are based on the energy spectrum of Cs-137. All American National Standards Institute standards and their associated test-and-evaluation protocols for calibration of radiation detection, instrumentation, and personal dosimetry rely on the use of Cs-137. In addition, all U.S. Department of Homeland Security-related standards for calibration of first responder and emergency response equipment, such as personnel self-reading dosimeters, portal monitors, and portable survey instruments, also require the use of Cs-137 for calibration purposes. Cs-137 was selected by the national and the international community as the basis of calibration because of the optimal single energy spectrum of this nuclide and its long half-life. The National Institute of Standards and Technology (NIST) maintains the national measurement standards and calibrates the instruments for secondary laboratories which require the use of Cs-137. These instruments are then sent to secondary and tertiary laboratories that, in turn, calibrate the instruments for end users. This network of facilities ensures that every radiation detection instrument that is used in the country measures radioactivity and identifies isotopes correctly and is traceable to NIST.

Ensuring Secure Disposal for Disused CsCl Sources

The disposal of CsCl radioactive sources, which are currently in use, is a challenge because of the high cost of disposal and the lack of commercial disposal facilities. The vast majority of the CsCl sources in use today are classified as greater-than-Class C low-level radioactive waste. Today, used and unwanted CsCl sources are stored safely and securely at the users' sites under the applicable NRC and Agreement State control and security requirements until options become available. To maintain source safety and security, the sites are routinely inspected in accordance with established NRC and Agreement State inspection procedures. The Commission considers it imperative to develop a pathway for the long-term storage and disposal of these sources because extended storage at licensee facilities increases the potential for safety and security issues. The NRC will continue to monitor Federal and State activities and private sector initiatives as medium- and long-term solutions are explored to address the need for

[7] Report to the President and the U.S. Congress Under Public Law 109–58, The Energy Policy Act of 2005, The Radiation Source Protection and Security Task Force Report, ADAMS Accession No. ML062190349.

[8] Report to the President and the U.S. Congress Under Public Law 109–58, The Energy Policy Act of 2005, The 2010 Radiation Source Protection and Security Task Force Report, ADAMS Accession No. ML102230141.

disposal and disposition of CsCl sources.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 assigned responsibility for providing disposal of this type of waste to DOE. However, pending the availability of a disposal capability, the DOE is not responsible for accepting disused sources for storage, transportation or other activities related to disposal except under special circumstances.[9] In February 2011, the DOE published the ''Draft Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC–Like Waste (DOE/EIS–0375D, DEIS)'' [10] as required under the National Environmental Policy Act for public review and comment. The DOE stated that in the coming years it plans to analyze public comments on its DEIS and finalize disposal alternative(s) for greater-than-Class C low-level radioactive waste, including CsCl sources. The Commission will monitor DOE as it makes a decision on a GTCC disposal facility, which will require an NRC license.

The NRC's Perspective on Further Security Enhancements

The NRC believes that the current enhanced regulatory framework for security of radioactive sources has been very effective in enhancing and ensuring the security and control of IAEA Category 1 and 2 sources used in medical, industrial, and research activities in the United States. The NRC encourages stakeholders to take an active role in source security and continue their efforts in maintaining the current security environment. As is necessary and practical, and in response to any change in the threat environment, the NRC will work with other Federal agencies to further enhance the secure use of Cs-137 sources. The NRC recognizes that it is prudent to maintain awareness of the status of research to identify alternative forms of CsCl. The NRC will remain cognizant of these issues and appropriately consider whether there are safety and security benefits to further risk reduction. As part of the NRC's responsibility to ensure the security of these sources, the NRC, in coordination with its Federal partners, continuously monitors the national threat environment and is prepared to take further regulatory actions should this environment change. Just as it did following the events of September 11, 2001, the NRC is prepared to take immediate action such as issuance of additional security requirements with Orders or rulemaking, to address such security-related issues, if necessary.

While the current security requirements and measures are adequate, the NRC encourages the source and device manufacturers to implement design improvements that further mitigate or minimize the radiological consequences of misuse or malevolent acts involving these sources. Accordingly, the NRC supports efforts by manufacturers to develop alternate forms of Cs-137 and to strengthen device modifications that could further reduce the risk of malevolent use associated with CsCl. The National Research Council of the National Academies issued a report [11] that supported these efforts, recommended that the NRC consider the potential economic and social disruption that changes to the CsCl requirements could cause, and supported a research and development program for alternative ''matrices'' for high-activity Cs-137 sources, which could provide lower security hazards.

The NRC recognizes that objective measures of 'solubility' and 'dispersibility' may need to be clarified as alternate forms of Cs-137 are developed by manufacturers. While it is outside the scope of the NRC's mission to conduct developmental research, the Commission encourages research to develop alternative chemical forms for large activity Cs-137 sources. Given the state of the current technology, and because a less dispersible form does not negate the risk or a potentially large cleanup and economic cost, the NRC believes that, for the near term, it is more appropriate to focus on continued enforcement of the United States security requirements and to mitigate risk through cooperative efforts and voluntary initiatives of industries that currently manufacture and use CsCl sources. While current NRC and Agreement State security requirements are in place to ensure the safety and security of these sources, additional voluntary security efforts by licensees and that of NNSA's security enhancement program help to enhance existing and future design improvements to further minimize the potential misuse or malevolent acts involving these sources.

Summary

The NRC is continually working with its domestic and international partners to assess, integrate, and improve its security programs, and to make radiation sources more secure and less vulnerable to terrorists. The NRC and the Agreement States have the responsibility to ensure the safe and secure use and control of radioactive sources, including CsCl sources. Both the NRC and the Agreement States have met this responsibility through imposition of additional security requirements. The actions of the NRC and the Agreement States to date have resulted in a strong security program. The NRC recognizes that near term replacement of devices or CsCl sources in existing blood, research, and calibration irradiators is not practicable or necessary due to implementation of the additional security requirements and lack of a disposal capacity. Many medical, research, and emergency response stakeholders have stated that short term replacement would be detrimental to existing medical programs, on-going biomedical research, and homeland response activities, respectively. Therefore, the NRC continues to believe that the security of these facilities should be maintained and enhanced as practical through the implementation of the regulatory requirements and through voluntary actions such as the physical security enhancements of existing devices and future designs against intrusion. The NRC supports efforts to develop alternate forms of Cs-137 that would reduce the security risks and will monitor these developments. Regarding possible future regulatory actions affecting the use of IAEA Category 1 and 2 CsCl sources, the NRC would solicit public input in the development of any rule or guidance for the use of CsCl devices if additional security measures are considered. The NRC will continue to work with its Federal and State partners to ensure the safety and security of CsCl sources. In the event that changes in the threat environment necessitate regulatory action, the NRC, in partnership with the Agreement States, will be ready to issue additional security requirements to apply appropriate limitations for the use of CsCl, as necessary.

Dated at Rockville, Maryland, this 19th day of July, 2011.

[9] Under specified circumstances, and pursuant to other authority and responsibility under the Atomic Energy Act of 1954, as amended, the DOE may recover excess or unwanted sealed sources (including CsCl sources) for reuse, storage or disposal that present threats to public health, safety or national security.

[10] See *http://www.gtcceis.anl.gov/.*

[11] National Research Council of the National Academies, ''Radiation Source Use and Replacement,'' The National Academies Press, Washington, DC, *http://www.nap.org.*

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–18767 Filed 7–22–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–23; Order No. 764]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Rosser, Texas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* July 29, 2011; *deadline for notices to intervene:* August 15, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), on July 14, 2011, the Commission received a petition for review of the closing of the Rosser, Texas post office. The petition, which was filed by Chris Taliaferro, is postmarked July 8, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–23 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than August 18, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community. *See* 39 U.S.C. 404(d)(2)(A)(iii).

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 applicable administrative record with the Commission is July 29, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is July 29, 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 also will be posted on the 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

All documents filed will be posted on the Commission's Web site. 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 persons, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before August 15, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than July 29, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than July 29, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson 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 and procedural schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

July 14, 2011	Filing of Appeal.
July 29, 2011	Deadline for the Postal Service to file the administrative record in this appeal.
July 29, 2011	Deadline for the Postal Service to file an answer responding to the application for suspension

PROCEDURAL SCHEDULE—Continued

August 15, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
August 18, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
September 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
September 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
September 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 7, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–18678 Filed 7–22–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–24; Order No. 765]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ben Franklin, Texas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* August 1, 2011; *deadline for notices to intervene:* August 15, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), on July 15, 2011, the Commission received a petition for review of the closing of the Ben Franklin, Texas post office. The petition, which was filed by Benny and Julie Lovell, is postmarked July 8, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–24 to consider Petitioners' appeal. If Petitioners would like to further explain his position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than August 19, 2011.

Categories of issues apparently raised. Petitioners contend that the Postal Service failed to consider effect of the closing 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 applicable administrative record with the Commission is August 1, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is August 1, 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 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, *http://www.prc.gov*, or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

All documents filed will be posted on the Commission's Web site. 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 persons, other than the 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 are to be filed on or before August 15, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov*, 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 Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record

regarding this appeal no later than August 1, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than August 1, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson 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 and Procedural Schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

July 15, 2011	Filing of Appeal.
August 1, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
August 1, 2011	Deadline for the Postal Service to file any responsive pleading.
August 15, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
August 19, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
September 8, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
September 23, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
September 30, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 7, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–18735 Filed 7–22–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–22; Order No. 763]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Peach Orchard, Arkansas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* July 29, 2011; *deadline for notices to intervene:* August 15, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), on July 14, 2011, the Commission received a petition for review of the closing of the Peach Orchard, Arkansas post office. The petition, which was filed by Marietta Austin, is postmarked July 7, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–22 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than August 18, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community. *See* 39 U.S.C. 404(d)(2)(A)(iii).

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 applicable administrative record with the Commission is July 29, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is July 29, 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 also will be posted on the 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 Web master 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

All documents filed will be posted on the Commission's Web site. 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 persons, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before August 15, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than July 29, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than July 29, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson 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 and procedural schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

July 14, 2011	Filing of Appeal.
July 29, 2011	Deadline for the Postal Service to file the administrative record in this appeal.
July 29, 2011	Deadline for the Postal Service to file an answer responding to the application for suspension.
August 15, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
August 18, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
September 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
September 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
September 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 4, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–18611 Filed 7–22–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64915; File No. SR–CHX–2011–13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Obligations of Exchange-Registered Institutional Brokers

July 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 12, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6)[3] which is effective upon filing with the Commission. 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

CHX proposes to add Interpretation and Policy .04 to Article 17, Rule 3 (Institutional Broker Responsibilities) to include an explicit reference to the obligation of Exchange-registered to seek execution of orders which they handle in a prompt and timely manner. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

Through this proposal, the Exchange seeks to add Interpretations and Policies .04 to Article 17, Rule 3 (Responsibilities of Institutional Brokers) to make explicit the obligation of Institutional Brokers registered with the Exchange to handle orders in a prompt and timely manner. The obligation to handle orders in a prompt and timely manner is part of the existing responsibility of a broker dealer to seek best execution when handling or executing an order on behalf of a customer.[4] The Exchange's Market Regulation Department conducts routine automated surveillance for compliance by Institutional Brokers with the requirement to handle and execute orders in a timely manner. The explicit

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See, e.g.,* NASD Rule 2320. (Best Execution and Interpositioning), ''In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.''

reference in the Interpretations and Policies to our rules to the requirement of Institutional Brokers to handle orders in a prompt and timely manner would reinforce this duty to the Institutional Brokers operating on the Exchange, and clarify the nature and scope of this obligation.

The requirement to handle orders in a prompt and timely manner would be subject to the existing provisions of that rule relating to ''not held'' orders. Not held orders involve price and time discretion and an Institutional Broker is permitted to delay the execution of a not held order if it believes that such action is in the best interests of the customer. Thus, the requirement to handle orders in a prompt and timely manner, while still applicable to not held orders, must allow for the legitimate application of price and time discretion by the Institutional Broker.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[6] and furthers the objectives of Section 6(b)(5) in particular,[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by reinforcing the duties of best execution and the requirement to handle orders in a prompt and timely manner to the Institutional Brokers operating on the Exchange, and clarify the nature and scope of this obligation. In addition, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(1) of the Act[9] in particular, in that it allows the Exchange to be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of the Act) to enforce compliance by its members and persons associated with such members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. As noted above, the Exchange believes that by adding an Interpretation and Policy to make explicit the obligation to handle orders in a prompt and timely manner, this proposal advances the purposes of the Exchange Act by providing added clarity about the nature and extent of the duties owed by Exchange Participants, and contributes to the ability of the CHX to effectively enforce compliance with those requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–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–CHX–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, 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2011–13 and should be submitted on or before August 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18684 Filed 7–22–11; 8:45 am]

BILLING CODE 8011–01–P

[5] If an Institutional Broker neglected to take any action on a not held order for an improper purpose, *e.g.,* inattention to or forgetting about the order, however, it could still be charged for failure to comply with these provisions.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(1).

[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. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64916; File No. SR–NASDAQ–2011–010]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Link Market Data Fees and Transaction Execution Fees

July 19, 2011.

On January 10, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to discount certain market data fees and increase certain liquidity provider rebates for members that both (1) Execute specified levels of transaction volume on NASDAQ as a liquidity provider, and (2) purchase specified levels of market data from NASDAQ. The proposed rule change was published for comment in the **Federal Register** on January 27, 2011.[3] The Commission suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change in an order published in the **Federal Register** on February 3, 2011.[4] The Commission has received three comment letters on the proposed rule change.[5] The Exchange responded to these comments on April 4, 2011.[6]

Section 19(b)(2) of the Act [7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2011. July 26, 2011 is 180 days from that date, and September 23, 2011 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in connection with this proposed rule change, and the Exchange's response to such issues in its response letter. Specifically, as the Commission noted in the Order Instituting Proceedings, the proposal raises issues such as whether a tying arrangement may not be consistent with the statutory requirements applicable to a national securities exchange and, in particular, whether the proposal may fail to satisfy the standards under the Exchange Act and the rules thereunder that require market data fees to be equitable, fair, and not unreasonably discriminatory.[8]

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates September 23, 2011, as the date by which the Commission should either approve or disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18685 Filed 7–22–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63745 (January 20, 2011) 76 FR 4970 (''Notice'').

[4] *See* Securities Exchange Act Release No. 63796 (January 28, 2011) 76 FR 6165 (''Order Instituting Proceedings'').

[5] *See* Letter dated January 13, 2011 from William O'Brien, Chief Executive Officer, Direct Edge to Florence E. Harmon, Deputy Secretary, Commission; Letter dated January 31, 2011 from Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian, Global Head of Market Data, TD Ameritrade Inc. to Elizabeth M. Murphy, Secretary, Commission; and Letter dated March 21, 2011 from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, and Markham Erickson, Executive Director and General Counsel, NetCoalition to Elizabeth M. Murphy, Secretary, Commission.

[6] *See* Letter dated April 4, 2011 from Joan Conley, Senior Vice President, NASDAQ OMX Group, Inc. to Elizabeth M. Murphy, Secretary, Commission.

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Order Instituting Proceedings, *supra* note 4 at 6165.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64914; File No. SR–BATS–2011–022]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Expand the Short Term Option Program

July 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 13, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 BATS. 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 amend Rules 19.6 and 29.11 to expand the Short Term Option Series Program (''STO Program'' or ''Program'') [3] so that the Exchange may select fifteen option classes on which Short Term Option Series [4] may be opened.

The text of the proposed rule change is available from 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The STO Program was established about a year ago on BATS Options. *See* Securities Exchange Act Release No. 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR–BATS–2010–020) (notice of filing and immediate effectiveness establishing Short Term Option Series Program on BATS). Other exchanges have also established permanent short term option programs, including The NASDAQ Stock Market LLC (''NOM''), NASDAQ OMX PHLX LLC (''Phlx''), Chicago Board Options Exchange (''CBOE''), International Securities Exchange (''ISE''), NYSE Arca Options (''Arca''), NYSE Amex, LLC (''Amex''), and NASDAQ OMX BX (''BX'').

[4] Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. BATS Rules 16.1(a)(56) and 29.2(n).

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 this proposed rule change is to modify Rule 19.6 and Rule 29.11 to expand the STO Program so that the Exchange may select fifteen option classes on which Short Term Option Series may be opened. This proposal is based directly on the recent expansion of the STO Program by Phlx.[5]

The STO Program is codified in Interpretation and Policy .05 to Rule 19.6 and Rule 29.11(h). These sections state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than five option classes that expire on the Friday of the following business week that is a business day. In addition to the five-option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.[6] Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to these additional Program limitations. The Exchange proposes only to increase from five to fifteen the number of option classes that may be opened pursuant to the Program.

The principal reason for the proposed expansion is customer demand for adding, or not removing, short term option classes from the Program. In order that the Exchange not exceed the five-option class restriction, the Exchange has had to discontinue trading short term option classes before it could begin trading other option classes within the Program. Moreover, since there is reciprocity in matching other exchange STO choices, the Exchange discontinues trading STO classes that other exchanges change from week-to-week. This has negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange not to remove short term option classes or add short term option classes.

The Exchange understands that a retail investor has recently requested another exchange (Phlx) to reinstate a short term option class that the exchange had to remove from trading because of the five-class option limit within the Program. The investor advised that the removed class was a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. The Exchange feels that it is essential that such negative, potentially very costly impacts on retail investors are eliminated by modestly expanding the Program to enable additional classes to be traded.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to eliminate option classes on numerous occasions because of the limitation imposed by the Program. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional short term option classes for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities. While the expansion of the STO Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

[5] *See* Securities Exchange Act Release No. 63875 (February 9, 2011), 76 FR 8793 (February 15, 2011) (SR–Phlx–2010–183) (order granting approval of expansion of short term option program). Other exchanges have similarly expanded their short term option programs. See Securities Exchange Act Release Nos. 64009 (March 2, 2011), 76 FR 12771 (March 8, 2011) (SR–BX–2011–014) (notice of filing and immediate effectiveness); 63877 (February 9, 2011), 76 FR 8794 (February 15, 2011) (SR–CBOE–2011–012) (notice of filing and immediate effectiveness); and 63878 (February 9, 2011), 76 FR 8796 (February 15, 2011) (SR–ISE–2011–08) (notice of filing and immediate effectiveness).

[6] If the Exchange opens less than twenty (20) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. *See* Interpretation and Policy .05 to BATS Rule 19.6 and BATS Rule 29.11.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[11] Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–022 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–2011–022. 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–BATS–2011–022 and should be submitted on or before August 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18683 Filed 7–22–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See* Securities Exchange Act Release No. 63875 (February 9, 2011), 76 FR 8793 (February 15, 2011) (SR–Phlx–2010–183) (order approving expansion of Short Term Option Program).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64918; File No. SR–NYSE–2011–35]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 103 To Reduce the Net Liquid Asset Requirements for DMM Units

July 19, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 14, 2011, New York Stock Exchange LLC (''NYSE'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 103 (''Registration and Capital Requirements of DMMs and DMM Units'') to reduce the net liquid asset requirements for DMM units. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

Rule 103. Registration and Capital Requirements of DMMs and DMM Units

(a)—(f) No change

Supplementary Material

.10–.11 No change

DMM Capital Requirements

.20

(a) Minimum Capital Requirements—No change

(b) DMM Units—Additional Capital Requirements.

(i) Each DMM unit subject to Rule 104 must maintain or have allocated to it minimum net liquid assets equal to:

(A) [$250,000] $*125,000* for each one tenth of one percent (.1%) of Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus $500,000 for each Exchange Traded Fund; and

(B) A market risk add-on *of [,* which shall be calculated as follows:

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

(1) The DMM unit may use an NYSE Regulation-approved value-at-risk (VaR) model to calculate its market risk add-on. The VaR model must have a 99%, one-tailed confidence level with price changes equivalent to a ten business day movement in rates and prices. To calculate the market risk add-on, the DMM unit multiplies the VaR of DMM and related positions by the appropriate multiplication factor, which is set at a minimum of three. The results of quarterly backtesting determine which of the multiplication factors contained in Table 1 of this rule a DMM unit must use; or

(2) For those DMM units not utilizing VaR or whose models have not been approved by NYSE Regulation, three times] the average of the prior twenty business days' securities haircuts on its DMM dealer's positions computed pursuant to Rule 15c3–1(c)(2)(vi), exclusive of paragraph (N), under the Exchange Act.

[(ii) A DMM unit may apply to NYSE Regulation for authorization to use a VaR model to calculate its market risk add-on, in lieu of calculating the average of the prior twenty business days' capital requirement for securities haircuts under Exchange Act Rule 15c3–1(c)(2)(vi), exclusive of paragraph (N). Once a DMM unit has been granted approval by NYSE Regulation to use a VaR model, it shall continue to compute its net liquid asset market risk add-on using VaR, unless a change is approved upon application to the NYSE Regulation. To apply for authorization to use a VaR model pursuant to this rule, a DMM unit must submit in writing the following information to NYSE Regulation with its application:

(A) A description of the mathematical models to be used to compute its market risk add-on;

(B) A description of the requirements as set forth in paragraph .20(c) of this rule; and

(C) Any other material NYSE Regulation may request.]

[(iii)] *(ii)* Notwithstanding the requirements of Rule 98, the DMM unit's net liquid assets needed to meet the requirements in this rule must be dedicated exclusively to DMM dealer activities, and must not be used for any other purpose without the express written consent of NYSE Regulation.

[(c) Definitions and Model Approval Process.—]

[(i)] *(iii)* For purposes of this rule, DMM units must define the term ''Exchange transaction dollar volume'' consistent with the most recent Statistical Data, calculated and provided by the NYSE on a monthly basis.

[(ii) For a DMM unit's VaR model to be approved, it must meet the following minimum qualitative and quantitative requirements:

(A) Qualitative Requirements.

(1) The VaR model used to calculate the market risk add-on for a position, along with a system of internal risk management controls to assist the DMM unit in managing the risks associated with its business activities, must be integrated into the daily internal risk management system of the DMM unit;

(2) The VaR model must be reviewed both periodically and annually by qualified independent member unit personnel or a qualified third party; and

(3) For purposes of computing the market risk add-on, the DMM unit must determine the appropriate multiplication factor as follows:

(I) As soon as possible, but no later than three months after the DMM unit begins using the VaR model to calculate their market risk add-on, the DMM unit must conduct backtesting of the model by comparing its actual daily net trading profit or loss with the corresponding VaR measure generated by the VaR model, using a 99 percent, one-tailed confidence level with price changes equivalent to a one business day movement in rates and prices, for each of the past 250 business days, or other period as may be appropriate for the first year of its use;

(II) On the last business day of each quarter, the DMM unit must identify the number of backtesting exceptions of the VaR model, that is, the number of business days in the past 250 business days, or other period as may be appropriate for the first year of its use, for which the actual net trading loss, if any, exceeds the corresponding VaR measure; and

(III) The DMM unit must use the multiplication factor indicated in Table 1 below in determining its market risk add-on until it obtains the next quarter's backtesting results;

TABLE 1—MULTIPLICATION FACTOR BASED ON THE NUMBER OF BACKTESTING EXCEPTIONS OF THE VAR MODEL

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

(4) For purposes of incorporating specific risk into a VaR model, a DMM unit must demonstrate that it has methodologies in place to capture liquidity, event, and default risk adequately for each position. Furthermore, the models used to calculate deductions for specific risk must:

(I) Explain the historical price variation in the portfolio;

(II) Capture concentration (magnitude and changes in composition);

(III) Be robust to an adverse environment; and

(IV) Be validated through backtesting.

(B) Quantitative Requirements.

(1) For purposes of determining market risk add-on, the VaR model must use a 99 percent, one-tailed confidence level with price changes equivalent to a ten-business day movement in rates and prices;

(2) The VaR model must use an effective historical observation period of at least one year. The DMM unit must consider the effects of market stress in its construction of the model. Historical data sets must be updated at least monthly and reassessed whenever market prices or volatilities change significantly; and

(3) The VaR model must take into account and incorporate all significant, identifiable market risk factors applicable to positions in the accounts of the DMM unit, including:

(I) Risks arising from the non-linear price characteristics of derivatives and the sensitivity of the market value of those positions to changes in the volatility of the derivatives' underlying rates and prices;

(II) Empirical correlations with and across risk factors or, alternatively, risk factors sufficient to cover all the market risk inherent in the positions in the dealer accounts of the DMM unit; and

(III) Specific risk for individual positions.]

[(d)] *(c)* Maintaining a Fair and Orderly Market.

Solely for the purpose of maintaining a fair and orderly market, NYSE Regulation may, for a period not to exceed 5 business days, allow a DMM unit to continue to operate despite such DMM unit's non-compliance with the provisions of the minimum requirements of this rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 103.20 to reduce the net liquid asset requirements for DMM units.[4] NYSE Rule 103.20 requires each DMM unit to maintain ''net liquid assets'' (that is, assets readily convertible to cash) pursuant to a formula that results in total net liquid assets of all DMM units equal to $250 million, plus a ''market risk add-on'' equal to three times securities position haircuts (deductions from market value) calculated under the net capital rules of the SEC.[5] The

[4] Pursuant to NYSE Rule 2(j), a DMM unit is defined as a member organization or unit within a member organization that has been approved to act as a DMM unit under Rule 98.

[5] Rule 103.20(b)(ii) allows DMM units to use an alternative market risk add-on calculation equal to

Continued

requirements of Rule 103.20 are in addition to the net capital requirements applicable to all broker dealers as prescribed in Rule 15c3–1,[6] promulgated under the Securities Exchange Act of 1934 (the ''Act'').[7] The purpose of this requirement is to assure that DMM units maintain sufficient liquidity to carry out their obligations to maintain an orderly market in their assigned securities in times of market stress.

The structure of the rule was established in July 2006 when the total requirement applicable to specialists was set at $1 billion. In February 2008, the amount was reduced to $250 million. In view of the significant changes since 2008 in the NYSE's market structure, as well as market-wide regulatory and trading developments and trends, the Exchange proposes that the DMM units' total net liquid assets requirement be further reduced to $125 million and that the market risk add-on be reduced from three times haircuts to one time haircuts. In addition, the Exchange proposes eliminating the value at risk (''VaR'') market risk add-on alternative, which is currently not being used by any DMM firms.

Background

On July 25, 2006, the SEC approved amendments to NYSE Rule 104 (the predecessor to the current Rule 103.20)[8] to revise the capital requirement applicable to specialist member organizations.[9] The amendments restructured the capital requirement for specialist organizations from an approach based on minimum dollar thresholds for each specialist stock, irrespective of position size or attendant market risk, to an approach based on specialist market share that is measured by total dollar volume traded combined with market stress and volatility risk analysis.

Pursuant to the 2006 amendments, then NYSE Rule 104.21 required that each specialist organization maintain minimum net liquid assets equal to $1 million for each one tenth of one percent (.1%) of the Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus $500,000 for each Exchange Traded Fund. Under this formula, the total base net liquid assets requirement for all specialists was fixed at $1 billion (before application of market risk add-ons). The market risk add-on under Rule 104.21 was an amount equal to three times the average of the prior twenty business days' securities haircuts on its dealer's positions computed pursuant to Rule 15c3–1(c)(2)(vi) under the Act, exclusive of the specialist exemption contained in the rule. The NYSE rule allowed an alternate method for computing the market risk add-on by using an Exchange-approved model for valuing the risk in its securities positions over a 20-day period. In such case, the specialist unit's market risk add-on was equal to three times VaR.

The NYSE stated in the 2006 SEC filing that, as a result of ongoing changes to the structure of the marketplace, it would be assessing specialist market risks annually to determine the continuing adequacy of the net liquid asset requirements. In connection with such assessment, in February 2008, Rule 104.21 was amended to reduce the total base net liquid assets requirement for all specialists from $1 billion to $250 million.[10] The Exchange's rationale for this reduction was based on (i) the specialist's reduced role in the NYSE's Hybrid Market[11] resulting in reduced participation and position levels; and (ii) specialists' performance during recent periods of high market volatility. Based upon that analysis, the Exchange determined that the reduced base net liquid assets requirement would be adequate to support the liquidity needs of the specialist organizations.

Proposed Amendment to Rule 103.20

The Exchange proposes to reduce the total base net liquid assets requirement for all DMM units by 50% from $250 million to $125 million, and the market risk add-on from three times securities position haircuts to one time the haircuts. In addition, the Exchange proposes eliminating the VaR market risk add-on alternative, which is currently not being used by any DMM units. Based on an analysis of market structure changes at NYSE and across the U.S. equities markets generally, the Exchange believes that the DMM unit market risk has been sufficiently reduced and that the proposed new liquid assets requirements will be adequate to support the liquidity needs of DMM units to perform their obligations to the market during periods of market stress.

In particular, the Exchange believes that the proposed changes to the DMM units' net liquid assets requirements are appropriate given the many changes to equity trading in the U.S. since February 2008. For example, the implementation of Regulation NMS in 2007 has resulted in new exchanges such as BATS Exchange, Inc., BATS Y–Exchange, Inc., and Direct Edge's EDGA and EDGX joining the market. These new exchanges, as well as the proliferation of off-exchange trading venues, have captured trading volume in NYSE-listed securities, which has dramatically reduced the Exchange's market share.[12]

In addition, in October 2008, the Exchange adopted the New Market Model, which made significant market structure changes, including replacing the specialist category of market participant with DMMs.[13] Among other changes, DMMs are not subject to the so-called ''negative obligations'' previously applicable to specialists to refrain from trading unless reasonably necessary to maintain a fair and orderly market. DMMs continue to have affirmative obligations to maintain a fair and orderly market in assigned securities. Moreover, to reflect the fact that Exchange electronic trading systems execute the vast majority of trades, the DMM is not agent for a trading ''book,'' but instead trades proprietarily subject to such obligations. DMMs were also provided new trading capabilities, including the ability to add liquidity to the market through new

three times value-at-risk (''VaR'') calculated pursuant to Exchange-approved risk models, but no DMM unit currently uses VaR to compute this requirement.

[6] 17 CFR 240.15c3–1.

[7] 15 U.S.C. 78a *et seq.*

[8] The capital requirement rule was kept intact but re-numbered as Rule 103 in connection with the adoption of the rules generally known as the Exchange's New Market Model. *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 74 FR 64379 (October 29, 2008) (SR–NYSE- 2008–46).

[9] *See* Securities Exchange Act Release No. 54205 (July 25, 2006); 71 FR 43260 (July 31, 2006) (SR–NYSE–2005–38) (approving amendments to NYSE Rules 104 and 123E (''Specialist Combination Review Policy'') that changed the capital requirements of specialist organizations). *See also* NYSE Information Memo 06–56 (August 2, 2006).

[10] *See* Securities Exchange Act Release No. 57272 (February 5, 2008); 73 FR 8098 (February 12, 2008) (SR–NYSE–2007–101).

[11] *See* Securities Exchange Act Release No. 53539 (March 22, 2006); 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) (approving the proposed rule change to establish the NYSE Hybrid Market). The rule change created a ''Hybrid Market'' by, among other things, increasing the availability of automatic executions in its existing automatic execution facility, NYSE Direct+, and providing a means for participation in the expanded automated market by its floor members. The change altered the way NYSE's market operates by allowing more orders to be executed directly in Direct+, which in essence moved NYSE from a floor-based auction market with limited automation order interaction to a more automated market with limited floor-based auction market availability.

[12] The Commission noted the extraordinary changes in the nature of trading in NYSE-listed stocks in its 2010 Concept Release on equity market structure. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (File No. S7–02–10).

[13] *See supra* note 8.

order and quotation types, and parity to execute against incoming orders. In addition, NYSE amended Rule 98 to, among other things, expand DMM units' ability to hedge intra-day and overnight market risk.

Market-wide changes have also served to dampen volatility and thus reduce DMM unit risk. These include the implementation of single-stock volatility circuit breakers and short sale price restrictions. The single-stock volatility circuit breakers seek to prevent extreme price movement by pausing trading in a covered security (currently all S&P 500 Index and Russell 1000 Index securities) for five minutes if it moves more than 10% within a five-minute window.[14] In addition, Regulation SHO short sale price restrictions were implemented on February 28, 2010, which help to reduce downside risk in securities falling more than 10% from the previous day's close.[15] The Exchange also recently filed with the SEC, together with other markets, a plan pursuant to Rule 608 of Regulation NMS under the Act to address extraordinary market volatility by adopting market-wide limit up-limit down requirements that would prevent trades in individual NMS stocks from occurring outside of specified price bands.[16] If implemented, the limit up-limit down plan would help reduce error trades and further mitigate risk.

A comparison of recent data against the 2007 data that was used to support the reduction in the net liquid assets test in February 2008, illustrates the degree to which the developments noted above have reduced overall DMM risk.

1. Market fragmentation has reduced the amount of trading on the NYSE from 48% market share in 2007 to 24% market share in 2010, and the amount of NYSE dollar value traded declined by half over the same period. There are 13 competing exchanges trading NYSE-listed securities and one third of NYSE consolidated volume is traded off-exchange on over 30 dark pools and over 200 upstairs trading desks. The net liquid asset requirement should be correlated to the amount of trading that DMM units transact within the NYSE's market share and dollar value traded. As NYSE share and dollar volume has declined, the amount of net liquid assets required to meet the DMM unit's obligations should similarly decline.

2. End-of-day DMM/specialist inventory positions on average have declined 80% from 2007 to present, reducing overnight risk exposure. DMM unit inventory positions fell from an average of $280 million during the week of September 10–14, 2007 (the time period used in the 2008 filing to support the previous reduction) to $57 million based on the 6-month average in the second half of 2010. Looking at May 2010, a volatile period, the DMM's average daily inventory was $78 million, 72% lower than the week of September 10–14, 2007.

3. DMM units are putting fewer dollars at risk on a given trade, and less capital is needed to support the resultant positions. The average dollar value per trade for DMMs declined 70% from $15,000 in 2007 to $4,600 in 2010. This trend partly reflects the decline in the average NYSE stock price (down 35% from 2007 to 2010), but is largely the result of the DMM units' increased use of algorithms to trade in smaller order sizes to reduce risk exposure. Algorithms are increasingly used by many market participants to trade in retail-sized increments and, as a result, the average NYSE trade size was only 357 shares ($9,924) in 2010.

4. The DMM units increasing use of trading technology and faster NYSE execution speeds enable DMMs to reduce order exposure time and better manage the risks of positions held. Faster NYSE executions speeds and DMM units' use of algorithms allow them to adjust positions quickly in response to changing market dynamics. NYSE has also reduced the time needed to incorporate market information into quotes, thereby allowing for better risk controls mechanisms by DMMs.

Based on the foregoing, the Exchange believes that it is appropriate to require DMM units to maintain base net liquid assets of $125 million, plus market risk add-ons. As proposed, the individual DMM unit percentage of this requirement will be fixed monthly based on a fraction for which the denominator is the total dollar value of all Exchange traded securities for the 20 trading days preceding the first day of a calendar month and the numerator is the DMM unit's total dollar value of securities traded for such period. In addition, the market risk add-on under Rule 103.20(b)(i)(B)(2), currently amounting to three times the average of the prior twenty business days securities haircut on its DMM unit positions computed pursuant to SEA Rule 15c3–1(2)(v)(1), exclusive of paragraph (N), as proposed would be set at one-times these haircuts and renumbered 103.20(b)(i)(B). Finally, because no DMM unit uses the VaR methodology to determine the market risk add-on, the Exchange proposes to remove this alternative.

The Exchange notes that FINRA will continue to assess DMM capital requirements in relationship to the New Market Model and monitor their capital positions on a daily basis.

The Exchange will notify DMM units of the implementation date of this rule change via a Member Education Bulletin.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act[17] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Exchange believes that the proposed rule change will reduce the burden on DMM units to maintain net liquidity while still ensuring adequate protection of DMM units during periods of market stress. Each of the DMM units have sources of funding that will provide necessary liquidity during a period of market stress and thus, it is no longer necessary for this liquidity to be maintained as capital, as DMM unit positions and the likelihood of losses have been reduced dramatically due to changes in the structure of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

[14] *See* NYSE Rule 80C. The Exchange and other markets recently filed to extend the single-stock circuit breakers to all other NMS stocks, *See* Securities Exchange Act Release No. 64420 (May 6, 2011), 76 FR 27675 (May 12, 2011) (SR–NYSE–2011–21).

[15] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7–08–09; Amendments to Regulation SHO) *and* NYSE Rule 440B.

[16] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–35 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–NYSE–2011–35. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* 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–NYSE–2011–35 and should be submitted on or before August 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18686 Filed 7–22–11; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7532]

Culturally Significant Objects Imported for Exhibition Determinations: ''Pacific Standard Time: Crosscurrents in L.A. Painting and Sculpture 1950–1970''

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, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Pacific Standard Time: Crosscurrents in L.A. Painting and Sculpture 1950–1970,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, Los Angeles, CA, from on or about October 1, 2011, until on or about February 5, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. 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: July 19, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–18717 Filed 7–22–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Public Transportation on Indian Reservations Program; Tribal Transit Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability: Solicitation of Grant Proposals for FY 2011 Tribal Transit Program Funds.

SUMMARY: This notice announces the availability of $15,075,000 in funding provided by the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)), a program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Section 3013(c). This notice is a national solicitation for grant proposals and it includes the selection criteria and program eligibility information for FY 2011 projects. This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* FTA will announce final selections on the Web site and in the **Federal Register**. Additionally, a synopsis of the funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.*

DATES: Complete proposals for the Tribal Transit program announced in this Notice must be submitted by September 26, 2011. All proposals must be submitted electronically through the *grants.gov apply* function. Any Tribe

intending to apply should initiate the process of registering on the *grants.gov* site immediately to ensure completion of registration before the submission deadline. Instructions for applying can be found on FTA's Web site at *http://www.fta.dot.gov/tribaltransit* and in the ''Find'' module of *grants.gov.*

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator (Appendix A) for proposal-specific information. For general program information, contact Lorna Wilson, Tribal Transit Program, (202) 366–0893, *e-mail: lorna.wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. Overview

Section 3013 of SAFETEA–LU, [Pub. L. 109–59 (August 10, 2005)] amended 49 U.S.C. 5311(c) by establishing the Public Transportation on Indian Reservations Program (Tribal Transit Program) (TTP). This program authorizes direct grants ''under such terms and conditions as may be established by the Secretary'' to Indian tribes for any purpose eligible under FTA's Nonurbanized Area Formula Program, 49 U.S.C. 5311 (Section 5311 program). A total of $15,075,000 is currently available for discretionary allocation.

II. Program Purpose

TTP funds are to be allocated for grants to federally recognized Indian tribes for any purpose eligible under the Section 5311 program. The Conference Report that accompanied SAFETEA–LU indicated that the funds set aside for Indian tribes in the TTP are not meant to replace or reduce funds that Indian tribes receive from States through FTA's Section 5311 program. TTP funds are meant to complement any 5311 funds that applicants may be receiving. These funds will be competitively allocated to support planning, capital, and operating assistance for tribal public transit services. Geographic diversity will be considered during the allocation of TTP funds.

III. Program Information

A. Eligible Applicants

Eligible applicants include Federally-recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior (DOI). To be an eligible recipient, a tribe must have the requisite legal, financial and technical capabilities to receive and administer Federal funds under this program. To verify federal recognition a tribe may submit a copy of the most up-to-date **Federal Register** notice published by DOI, BIA: Entities Recognized and Eligible to Receive Service from the United States Bureau of Indian Affairs. Applicants must be registered in the Central Contractor Registration (CCR) database and maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by FTA.

B. Eligible Projects

Grants can be awarded to recipients located in rural and small urban areas with populations under 50,000 not identified as an urbanized area by the Bureau of the Census and may be used for public transportation capital projects, operating costs of equipment and facilities for use in public transportation, planning, and the acquisition of public transportation services, including service agreements with private providers of public transportation services. Under DOT Americans with Disabilities Act of 1990 (ADA) regulations, public fixed-route operators are required to provide ADA complementary paratransit service to individuals who are unable to use fixed route due to their disability or a fixed route being inaccessible. Coordinated human service transportation that primarily serves elderly persons and persons with disabilities, but that is not restricted from carrying other members of the public, is considered available to the general public if it is marketed as public transportation. Examples of eligible TTP projects are start-up service, enhancement or expansions of existing services, purchase of transit capital items including vehicles, and planning or operational planning grants.

C. Cost Sharing and Matching

Projects selected for funding under the TTP can be funded up to 100 percent federal share of project costs.

D. Proposal Content

1. Proposal Submission Process

Project proposals must follow the submission guidelines that are provided at *http://www.fta.dot.gov/tribaltransit.* A synopsis of this announcement is also posted in the ''FIND'' module of the *grants.gov.* E-mail, mail and fax submissions will not be accepted.

Complete proposals for the Tribal Transit program must be submitted electronically through the *grants.gov* Web site by September 26, 2011. Applicants are encouraged to begin the process of registration on the *grants.gov* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted successfully. In addition to the Mandatory SF424 Form that will be downloaded from *grants.gov,* FTA requires applicants to complete the Supplemental FTA Form to enter descriptive and data elements of individual program proposals for these discretionary programs. These supplemental forms provide guidance and a consistent format for applicants to respond to the criteria outlined in this Notice of Funding Availability (NOFA) and described in detail on the FTA Web site at *http://www.fta.dot.gov/tribaltransit.* Applicants *must* use this Supplemental Form and attach it to their submission in *grants.gov* to successfully complete the application process. Within 24–48 hours after submitting an electronic application, the applicant should receive an e-mail validation message from *grants.gov.* The validation will state whether *grants.gov* found any issues with the submitted application. As an additional notification, FTA's system will notify the applicant if there are any problems with the submitted Supplemental FTA Form. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated. Complete instructions on the application process can be found at *http://www.fta.dot.gov/tribaltransit.*

Important: FTA urges applicants to submit their applications at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

The following information must accompany all requests for TTP funding.

2. Proposal Information

i. Name of Federally recognized tribe and, if appropriate, the specific tribal agency submitting the application.

ii. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

number if available. (**Note:** If selected, applicant will be required to provide DUNS number prior to grant award.)

iii. Contact information including: Contact name, title, address, congressional district, fax and phone number, and e-mail address if available.

iv. Description of public transportation services including areas currently served by the tribe, if any.

v. Name of person (s) authorized to apply on behalf of the tribe (signed transmittal letter) must accompany the proposal.

vi. Technical, legal, and financial capacity to implement the proposed project.

3. Project Information

i. Budget: Provide the Federal amount requested for each purpose for which funds are sought and any funding from other sources that will be provided. A Tribe may allow up to fifteen percent of the grant award for planning and the indirect costs rate may not exceed ten percent.

ii. Project Description: Indicate the category for which funding is requested; *i.e.,* start-ups, enhancements or replacements of existing transit services or planning studies or operational planning grants. Provide a summary description of the proposed project and how it will be implemented (*e.g.,* number and type of vehicles, service area, schedules, type of services, fixed route or demand responsive), route miles (if fixed route), major origins and destinations, population served, and whether the tribe provides the service directly or contracts for services and how vehicles will be maintained.

iii. Project Timeline: Include significant milestones such as date of contract for purchase of vehicle(s), actual or expected delivery date of vehicles, and service start-up dates.

E. Evaluation Criteria

FTA will divide proposals into three categories for evaluation. The three evaluation categories are as follows:

1. Start-ups—Proposals for funding of new transit service include capital, operating, administration, and planning.

2. Existing transit services—Proposals for funding of enhancements or expansion of existing transit services include capital, operating, administration, and planning.

3. Planning—Proposals for planning include funding of transit planning studies and/or operational planning.

Applications will be grouped into their respective category for review and scoring purposes.

Tribes that cannot demonstrate adequate capacity in technical, legal and financial areas will not be considered for funding. Every proposal must describe the tribe's technical, legal, and financial capacity to implement the proposed project.

i. Technical Capacity: Provide examples of the tribe's management of other Federal projects. What resources does the tribe have to implement a transit project?

ii. Legal Capacity: Provide documentation or other evidence to show that the applicant is a federally recognized tribe and an authorized representative to execute legal agreements with FTA on behalf of the tribe. If applying for capital or operating funds, does the tribe have appropriate Federal or State operating authority?

iii. Financial Capacity: Does the tribe have adequate financial systems in place to receive and manage a Federal grant? Describe the tribe's financial systems and controls.

a. Evaluation Criteria for Start-Ups and Existing Transit Service

1. Project Planning and Coordination

In this section, the applicant should describe how the proposed project was developed and demonstrate that there is a sound basis for the project and that it is ready to implement if funded. Proposals will be rated whether there is a sound basis for the proposal and if it is ready to implement. Information may vary depending upon how the planning process for the project was conducted. Project planning and coordination should consider and address the following areas:

i. Describe the planning document and/or the planning process conducted to identify the proposed project.

ii. Provide a detailed project description including the proposed service, vehicle and facility needs, and other pertinent characteristics of the proposed service implementation.

iii. Identify existing transportation services available to the tribe and discuss whether the proposed project will provide opportunities to coordinate service with existing transit services, including human service agencies, intercity bus services, or other public transit providers.

iv. Discuss the level of support either by the community and/or tribal government for the proposed project.

v. Describe how the mobility and client-access needs of tribal human service agencies were considered in the planning process.

vi. Describe what opportunities for public participation were provided in the planning process and how the proposed transit service or existing service has been coordinated with transportation provided for the clients of human service agencies, with intercity bus transportation in the area, or with any other rural public transit providers.

vii. Describe how the proposed service complements rather than duplicates any currently available services.

viii. Describe the implementation schedule for the proposed project, including time frame, staffing, procurement, *etc.*

ix. Describe any other planning or coordination efforts that were not mentioned above.

2. Demonstration of Need

In this section, the proposal should demonstrate the transit needs of the tribe and discuss how the proposed transit improvements will address the identified transit needs. Proposals may include information such as destinations and services not currently accessible by transit, need for access to jobs or health care, special needs of the elderly and individuals with disabilities, income-based community needs, or other mobility needs.

Based on the information provided, the proposals will be rated on whether there is a demonstrated need for the project and how well does the project fulfill the need.

3. Demonstration of Benefits

In this section, proposals should identify expected project benefits. Possible examples include increased ridership and daily trips, improved service, improved operations and coordination, and economic benefits to the community.

Benefits can be demonstrated by identifying the population of tribal members and non-tribal members in the proposed project service area and estimating the number of daily one-way trips the transit service will provide and or the number of individual riders. There may be many other, less quantifiable, benefits to the tribe and surrounding community from this project. Please document, explain or show the benefits in whatever format is reasonable to present them.

Based on the information provided proposals will be rated based on four factors:

i. Will the project improve transit efficiency or increase ridership?

ii. Will the project improve mobility for the tribe?

iii. Will the project improve access to important destinations and services?

iv. Are there other qualitative benefits?

4. Financial Commitment and Operating Capacity

In this section, the proposal should identify any other funding sources used by the tribe to support existing or proposed transit services, including human service transportation funding, Indian Reservation Roads, or other FTA programs such as Job Access and Reverse Commute, New Freedom, Section 5311, Section 5310, or Section 5309 Bus and Bus Facilities.

For existing services, the proposal should show how TTP funding will supplement (not duplicate or replace) current funding sources. If the transit system was previously funded under section 5311 through the State's apportionment, describe how requested TTP funding will expand available services.

Describe any other resources the tribe will contribute to the project, including in-kind contributions, commitments of support from local businesses, donations of land or equipment, and human resources, and describe to what extent the new project or funding for existing service leverages other funding.

The tribe should show its ability to manage programs by demonstrating the existing programs it administers in any area of expertise such as human services. Based upon the information provided, the proposals will be rated on the extent to which the proposal demonstrates that:

i. This project provides new services or complements existing service;

ii. TTP funding does not replace existing funding;

iii. The tribe has or will provide non-financial support to project;

iv. The tribe has demonstrated ability to provide other services or manage other programs; and

v. Project funds are used in coordination with other services for efficient utilization of funds.

b. Evaluation Criteria for Planning Proposals

For planning grants, the application should describe, in no more than three pages, the need for and a general scope of the proposed study.

The application should address the following:

1. Is the tribe committed to planning for transit?

2. Is the scope of the proposed study for tribal transit?

c. Note on Continuation Projects

If an applicant is requesting FY 2011 funding to continue a project funded previously with prior year resources, tribes must demonstrate that their project(s) are in an active status to receive additional funding. Along with the criteria listed in Section 111.5.a, proposals should state that the applicant is a current TTP grantee and provide information on their transit project(s) status including services now being provided and how the new funding will complement the existing service. Please provide any data that would be helpful to project evaluators, *i.e.,* ridership, increased service hours, extended service routes, stops, *etc.* If you received a planning grant in previous fiscal years, please indicate the status of your planning study and how this project relates to that study.

IV. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section 3. Due to funding limitations, applicants that are selected for funding may receive less than the amount requested.

Complete applications must be submitted through *grants.gov* by September 26, 2011. Applicants may receive technical assistance for application development by contacting their FTA regional Tribal liaison, or the National Rural Transportation Assistance Program office. Contact information for technical assistance can be found in Appendix B.

Peter Rogoff,

Administrator.

APPENDIX A

FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator Region 1-Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.
States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Brigid Hynes-Cherin, Regional Administrator, Region 2–New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.
States served: New Jersey, New York.
New York Metropolitan Office Region 2–New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.
Letitia Thompson, Regional Administrator, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.
States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.
Philadelphia Metropolitan Office, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.
Washington, D.C. Metropolitan Office, 1990 K Street, NW, Room 510, Washington, DC 20006, Tel. 202–219–3562.
Yvette Taylor, Regional Administrator, Region 4–Atlanta, 230 Peachtreet Street, NW Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.
States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina,Tennessee, and Virgin Islands.
Marisol Simon, Regional Administrator, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.
States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Chicago Metropolitan Office, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789..
Robert C. Patrick, Regional Administrator, Region 6–Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.
States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.
Mokhtee Ahmad, Regional Administrator, Region 7–Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.
States served: Iowa, Kansas, Missouri, and Nebraska.
Terry Rosapep, Regional Administrator, Region 8–Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.
States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Leslie T. Rogers, Regional Administrator, Region 9–San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.
States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.
Los Angeles Metropolitan Office, Region 9–Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.
Rick Krochalis, Regional Administrator, Region 10–Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.
States served: Alaska, Idaho, Oregon, and Washington

APPENDIX B

Technical Assistance Contacts

Alaska Tribal Technical Assistance Program: Kim Williams, University of Alaska, Fairbanks, P.O. Box 756720, Fairbanks, AK 99775–6720, (907) 842–2521, (907) 474–5208, *williams@nushtel.net, http://community.uaf.edu/~alaskattac,*
Service area: *Alaska.*

National Indian Justice Center: Raquelle Myers, 5250 Aero Drive, Santa Rosa, CA 95403, (707) 579–5507 or (800) 966–0662, (707) 579–9019, *nijc@aol.com, http://www.nijc.org/ttap.html,*
Service area: *California, Nevada.*

Tribal Technical Assistance Program at Colorado State University: Ronald Hall, Rockwell Hall, Room 321, Colorado State University, Fort Collins, CO 80523–1276, (800) 262–7623, (970) 491–3502, *ronald.hall@colostate.edu, http://ttap.colostate.edu/,*
Service area: *Arizona, Colorado, New Mexico, Utah.*

Tribal Technical Assistance Program (TTAP): Bernie D. Alkire, 301–E Dillman Hall, Michigan Technological University, 1400 Townsend Drive, Houghton, MI 49931–1295, (888) 230–0688, (906) 487–1834, *balkire@mtu.edu, http://www.ttap.mtu.edu/,*
Service area: *Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania.*

Northern Plains Tribal Technical Assistance Program: Dennis Trusty, United Tribes Technical College, 3315 University Drive, Bismarck, ND 58504, (701) 255–3285 ext. 1262, (701) 530–0635, *nddennis@hotmail.com, http://www.uttc.edu/forum/ttap/ttap.asp,*
Service area: *Montana (Eastern), Nebraska (Northern), North Dakota, South Dakota, Wyoming.*

Northwest Tribal Technical Assistance Program: Richard A. Rolland, Eastern Washington University, Department of Urban Planning, Public & Health Administration, 216 Isle Hall, Cheney, WA 99004, (800) 583–3187, (509) 359–7485, *rrolland@ewu.edu, http://www.ewu.edu/TTAP/,* Service area: *Idaho, Montana (Western), Oregon, Washington.*

Tribal Technical Assistance Program at Oklahoma State University: James Self, Oklahoma State University, 5202 N. Richmond Hills Road, Stillwater, OK 74078–0001, (405) 744–6049, (405) 744–7268, *jim.self@okstate.edu, http://ttap.okstate.edu/,*
Service area: *Kansas, Nebraska (Southern), Oklahoma, Texas.*

Other Technical Assistance Resources

National RTAP (National Rural Transit Assistance Program): Contact: Patti Monahan, National RTAP, 5 Wheeling Ave, Woburn, MA 01801, (781) 404–5015 (Direct), (781) 895–1122 (Fax), (888) 589–6821 (Toll Free), *pmonahan@nationalrtap.org, http://www.nationalrtap.org.*

Community Transportation Association of America: The Resource Center: 800–891–0590, *http://www.ctaa.org/.*

APPENDIX C

FY 2011 Discretionary Programs Schedule

Initiative	Funding Availability	NOFA Publication Target	Application Deadline
SGR Initiative (Bus)	**$750,000,000**	**6/24/2011**	**7/29/2011**
Livability Expansion Initiative	**$175,000,000**	**6/27/2011**	**7/29/2011**
Alternatives Analysis	$25,000,000		
Bus & Bus Facilities	$150,000,000		
Sustainability Initiative	**$101,400,000**	**6/24/2011**	**8/23/2011**
Clean Fuels Bus Program	$51,500,000		
TIGGER III	$49,900,000		
Other Programs	**$50,640,500**		
Paul S. Sarbanes Transit in Parks	$26,765,500	3/10/2011	5/9/2011
Tribal Transit	$15,075,000	7/25/2011	9/26/2011
Over-the-Road-Bus	$8,800,000	7/11/2011	9/12/2011

[FR Doc. 2011–18563 Filed 7–22–11; 8:45 am]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35535]

Pennsylvania Northeastern Railroad, LLC—Acquisition and Operation Exemption—CSX Transportation, Inc.

Pennsylvania Northeastern Railroad, LLC (PNR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from CSX Transportation, Inc. (CSXT), and to operate, a permanent freight easement over approximately 55.53-miles of rail line owned by Southeastern Pennsylvania Transportation Authority (SEPTA), known as the Lansdale Cluster. The Lansdale Cluster includes lines between: (1) Milepost QAJ 6.70 at Newtown Junction, Pa., and milepost QAJ 30.50 at Telford, Pa., a distance of 23.80 miles (Bethlehem Branch); (2) milepost QAH 0.00 at Lansdale, Pa., and milepost QAH 10.13 at Doylestown, Pa., a distance of 10.13 miles (Doylestown Branch); (3) milepost QAU 0.00 at Glenside, Pa., and milepost QAU 8.40 at Ivyland, Pa., a distance of 8.40 miles (New Hope Branch); (4) milepost QAA 10.90 at Jenkintown, Pa., and milepost QAA 21.10 at Neshaminy, Pa., distance of 10.20 miles (New York Line); and (5) milepost QAC 0.00 at Lansdale and milepost QAC 3.00, a distance of 3.0 miles (a portion of the Stony Creek Branch), together the Rail Lines.[1]

PNR states that it is finalizing an agreement with CSXT to acquire a permanent freight easement to operate over the Rail Lines. According to PNR, freight operations over the Rail Lines have been implemented and conducted under a trackage rights agreement, originally between SEPTA and Consolidated Rail Corporation, and now among SEPTA, CSXT, and Norfolk Southern Railway Company. PNR states that the parties are amending the trackage rights agreement to, *inter alia,* assign CSXT's rights to operate the Rail Lines to PNR so that PNR can conduct freight operations.[2]

This transaction is related to a notice of exemption that will be filed in Docket No. FD 35534, *Paul Nichini—Continuance in Control Exemption—Pennsylvania Northeastern Railroad and New Hope & Ivyland Railroad,* wherein Paul Nichini will seek to continue in control of PNR upon its becoming a Class III rail carrier.[3]

PNR certifies that its projected revenue as a result of the transaction will not exceed those that would qualify it as a Class III carrier, and further certifies that its projected revenues upon becoming a Class III carrier will not exceed $5 million.

According to PNR, the transaction is expected to be consummated on or after August 13, 2011. The earliest the transaction may be consummated is after the August 7, 2011 effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than July 29, 2011 (at least 7 days before the exemption becomes effective).

[1] PNR states that it also acquiring the right to operate the Lansdale Yard, which is adjacent to the Rail Lines, but further states that, pursuant to 49 U.S.C. 10906, the acquisition of yard track does not require authorization of the Board.

[2] It appears that PNR should file a separate notice of exemption under 49 CFR 1180.2(d)(7) from Board approval under 49 U.S.C. 11323(a)(6) of these amended trackage rights, or PNR should provide a further explanation as to why a separate notice of exemption under § 1180.2(d)(7) is unnecessary.

[3] A notice of exemption in Docket No. FD 35534 has not yet been filed. PNR may not consummate the transaction described in this notice until after the effective date of the continuance in control exemption to be filed in Docket No. FD 35534.

An original and 10 copies of all pleadings, referring to Docket No. FD 35535, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: July 20, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–18729 Filed 7–22–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before August 24, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2204.

Type of Review: Extension without change of a currently approved collection.

Title: CS–10–251—Prepaid Card Marketing Customer Survey.

Abstract: The purpose of the social marketing prepaid card initiative is to evaluate taxpayer knowledge, beliefs, barriers and perception of the prepaid card—providing first-hand information that has not been collected to date. In Fiscal Year (FY) 2009, the IRS initiated a formal effort to collaborate with financial institutions (banks) and Volunteer Income Tax Assistance (VITA) sites to encourage taxpayers who do not request direct-deposited refunds to opt for a prepaid card sponsored by the financial institutions. These taxpayers are likely to be unbanked and without means of freely cashing their refund check. The perceived benefits of the prepaid card program are (1) Faster transfer of refunds to the taxpayer compared to the paper check mode, and (2) low-cost transactions to use the refund amount. To help improve participation, IRS is hoping to leverage the theory and principles of social marketing. Social marketing principles and practices apply marketing principles to social programs. This data will provide the IRS with practical information to be used to determine the value of offering the prepaid card to taxpayers in the future.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 542.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–18658 Filed 7–22–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee July 26, 2011 Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee July 26, 2011 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for July 26, 2011.

Date: July 26, 2011.

Time: 9 a.m. to 1 p.m.

Location: United States Mint, 801 9th Street, NW., Washington, DC, 20220.

Subject: Review and discussion of the candidate designs for the gold and silver 2012 Star-Spangled Banner Commemorative Coin Program.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Greg Weinman, Acting United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–18631 Filed 7–22–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Proposed Information Collection (Certificate as to Assets) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to audit accountings of fiduciaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2011.

ADDRESSES: Submit written comments on the collection of information through

Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0107'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate as to Assets, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Extension of a currently approved collection.

Abstract: Fiduciaries are required to complete VA Form 21–4709 to report investment in savings, bonds and other securities that he or she received on behalf of beneficiaries who are incompetent or under legal disability. Estate analysts employed by VA use the data collected to verify the fiduciaries' accounting of a beneficiary's estate.

Affected Public: Individuals or households.

Estimated Annual Burden: 863 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,316.

Dated: July 20, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18733 Filed 7–22–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Proposed Information Collection (Student Beneficiary Report—REPS (Restored Entitlement Program for Survivors)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to confirm a student's continued entitlement to Restored Entitlement Program for Survivors.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0399'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Beneficiary Report—REPS (Restored Entitlement Program For Survivors), VA Forms 21–8938 and 21–8938–1.

OMB Control Number: 2900–0399.

Type of Review: Extension of a previously approved collection.

Abstract: Students between the ages of 18–23 who are receiving Restored Entitlement Program for Survivors (REPS) benefits based on schoolchild status complete VA Forms 21–8938 and 21–8938–1 to certify that he or she is enroll full-time in an approved school. REPS benefit is paid to children of veterans who died in service or who died as a result of service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the data collected to determine the student's eligibility for continued REPS benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

Dated: July 20, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18730 Filed 7–22–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Proposed Information Collection (Application for Automobile or Other Conveyance and Adaptive Equipment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine claimants' eligibility for automobile adaptation equipment or other conveyance allowance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0067'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Automobile or other Conveyance and Adaptive Equipment (under 38 U.S.C. 3901–3904), VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans, servicepersons and their survivors complete VA Form 21–4502 to apply for automobile or other conveyance allowance, and reimbursement for the cost and installation of adaptive equipment. VA uses the information to determine the claimant's eligibility for such benefits.

Affected Public: Individuals and households.

Estimated Annual Burden: 388.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,552.

Dated: July 20, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18731 Filed 7–22–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Proposed Information Collection (Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine entitlement to dependency and indemnity compensation (DIC), death pension and accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0004'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

b. Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child—In-service Death Only, VA Form 21–543a.

OMB Control Number: 2900–0004.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 21–534 is used to determine surviving spouse and/or children of veterans entitlement to dependency and indemnity compensation (DIC), death benefits (including death compensation if applicable), and any accrued benefits not paid to the veteran prior to death.

b. Military Casualty Assistance Officers complete VA Form 21–534a to assist surviving spouse and/or children of veterans who died on active duty in processing claims for dependency and indemnity compensation benefits. Accrued benefits and death compensation are not payable in claims for DIC.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–534—76,136 hours.

b. VA Form 21–534a—600 hours.

Estimated Average Burden per Respondent:

a. VA Form 21–534—75 minutes.

b. VA Form 21–534a—15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 21–534—37,700.

b. VA Form 21–534a—23,209.

Dated: July 20, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18732 Filed 7–22–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 80
Regulation To Mitigate the Misfueling of Vehicles and Engines With Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2010–0448; FRL–9428–2]

RIN 2060–AQ17

Regulation To Mitigate the Misfueling of Vehicles and Engines With Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In two recent actions under the Clean Air Act (CAA), EPA granted partial waivers that allow gasoline containing greater than 10 volume percent (vol%) ethanol up to 15 vol% ethanol (E15) to be introduced into commerce for use in model year (MY) 2001 and newer light-duty motor vehicles, subject to certain conditions. In today's action, EPA is establishing several measures to mitigate misfueling of other vehicles, engines and equipment with E15 and the potential emissions consequences of misfueling. Specifically, the rule prohibits the use of gasoline containing more than 10 vol% ethanol in vehicles, engines and equipment not covered by the partial waiver decisions. The final rule also requires all E15 gasoline fuel dispensers to have a specific label when a retail station or wholesale-purchaser consumer chooses to sell E15. In addition, the rule requires that product transfer documents (PTDs) specifying ethanol content and Reid Vapor Pressure (RVP) accompany the transfer of gasoline blended with ethanol through the fuel distribution system, and a survey of retail stations to ensure compliance with E15 labeling, ethanol content and other requirements. The rule also modifies the Reformulated Gasoline (RFG) program to allow fuel manufacturers to certify batches of E15. Finally, today's action denies a petition for rulemaking to require retail stations to offer for sale gasoline containing 10 vol% ethanol or less.

DATES: This final rule is effective on August 24, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0448. 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, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Robert K. Anderson, Office of Transportation and Air Quality, Compliance and Innovative Strategies Division, Environmental Protection Agency, 1310 L St., NW., Washington, DC; telephone number: 202–343–9718; fax number: 202–343–2800; *e-mail address: anderson.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this action include those involved with the production, importation, distribution, marketing, or retailing of diesel fuel and production of gasoline. Categories and entities affected by this action include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers. Other fuel dealers.
Industry	454319	5989	Gasoline service stations.
Industry	447190	5541	Marine service stations. Truck stops.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action; however, other types of entities not listed in the table could also be affected. To determine whether your entity is affected by this action, you should examine the applicability criteria of parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline of This Preamble

I. Executive Summary

In today's final rule, EPA is establishing several measures to mitigate the potential for E15 [1] to be used to fuel vehicles, engines and equipment for which E15 has not been approved for introduction into commerce. These regulations are being issued in conjunction with EPA's two recent decisions to grant partial waivers for E15 under section 211(f)(4) of the Clean Air Act (CAA or the Act). The partial waivers allow the introduction into commerce of E15 for use in model year (MY) 2001 and newer light-duty motor vehicles (cars, light-duty trucks and medium-duty passenger vehicles). The E15 partial waivers impose a number of conditions designed to help ensure that E15 is introduced into commerce for use only in MY2001 and newer light-duty motor vehicles and in flexible-fueled vehicles, and not for use in any other vehicles, engines or equipment. Some of the regulatory provisions in this action parallel those waiver conditions and are expected to be a more efficient way to minimize in-use emission increases that might result from misfueling with E15. The misfueling mitigation measures adopted today ensure that fuel providers have a strong incentive to properly blend and label E15 and consumers have a strong incentive to avoid misfueling. By effectively addressing the potential for misfueling, the measures should also have the benefit of facilitating the successful introduction of E15 into commerce.

A. Proposed Rule

EPA proposed four regulatory provisions to address concerns about potential misfueling: (1) A prohibition against the use of gasoline containing more than 10 vol% ethanol in vehicles, engines and equipment not covered by the partial waiver decisions, specifically MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, on and off-highway motorcycles,[2] and nonroad engines, vehicles, and equipment; [3] (2) labeling requirements for fuel pumps that dispense E15 to alert consumers to the appropriate and lawful use of the fuel; (3) the addition to PTDs of information regarding the ethanol content of, or the level of ethanol that may be added to, gasoline being sold to retail stations or wholesale purchaser-consumers so that E15 may be properly blended and labeled; and (4) an ongoing implementation survey requirement to ensure that E15 is in fact being properly blended and labeled (75 FR 68044, Nov. 4, 2010). EPA explained that it has used such strategies to implement several fuels programs over the past 30 years, and that the proposed measures should effectively mitigate misfueling and the associated emissions impacts while enabling the use of E15 in appropriate motor vehicles. The E15 misfueling mitigation waiver conditions and a substantial consumer education and outreach effort are also directed at achieving this result. The Agency asked for comment on its proposed requirements and on several other options, including whether additional misfueling mitigation measures might be appropriate.

EPA received over 80 comments from fuel providers, manufacturers of vehicles, engines and gasoline-powered equipment, boat owners, States, and environmental groups. While a number of comments raised continuing concerns with EPA's decision to grant the partial waivers, all acknowledged the importance of an effective misfueling mitigation program and provided thoughtful suggestions about how the Agency's proposed regulations might be improved or supplemented.

B. Final Mitigation Measures

After carefully considering the public comments, we are finalizing the four proposed misfueling mitigation measures with a number of changes designed to enhance their effectiveness and more carefully tailor them to their purpose. Specifically, we are adopting the prohibition on misfueling. The comments we received were generally supportive of the prohibition in view of EPA's decision to deny the E15 waiver request for MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles and nonroad products because of the emissions increases that could result if E15 (or higher gasoline-ethanol blends) were used, particularly over time, in those vehicles, engines and products. With adoption of the misfueling prohibition, gasoline and ethanol producers, distributors, retailers and consumers have a legal obligation not to make, distribute, sell or use gasoline containing more than 10 vol% ethanol for or in vehicles, engines and

[1] For purposes of this preamble, E15 refers to gasoline-ethanol blended fuels that contain greater than 10 vol% and no more than 15 vol% ethanol content.

[2] Off-highway motorcycles are considered nonroad vehicles but for purposes of this preamble on and off-highway motorcycles are referred to collectively as ''motorcycles.''

[3] For purposes of this preamble, nonroad engines, vehicles, and equipment are referred to as ''nonroad products.''

equipment not covered by the partial waiver decisions.

To provide consumers with information at the pump to avoid misfueling, we are adopting an E15 pump label that reflects many commenters' suggestions and our consultation with consumer labeling experts at the Federal Trade Commission (FTC).[4] Before EPA issued its partial waiver decisions, FTC had proposed labels for gasoline-ethanol blends containing more than 10 vol% ethanol to address issues within its jurisdiction. Commenters on our proposed E15 label urged us to work with FTC to develop a coordinated labeling program to avoid multiple, potentially conflicting labels. Commenters also recommended that we seek advice from labeling experts. In developing today's final labeling requirements, we consulted with FTC consumer labeling experts and other staff about effective label design and potential coordination with FTC labels.

EPA's final E15 label incorporates public and FTC staff suggestions for more simply and effectively communicating the information consumers need to avoid misfueling with E15. The label also adopts FTC's color scheme for alternative fuel labels and other aspects of the design of FTC's proposed gasoline-ethanol blend labels, such as size, shape, and font, so that the two agencies' labels could work together as a coordinated labeling scheme for gasoline-ethanol blends containing more than 10 vol% ethanol. We believe that the final E15 label provides consumers with the key information they need about the appropriate use of E15.

Today's rule also includes PTD and implementation survey requirements that have been revised and refined in response to public comments to better accomplish their purpose. We are requiring that PTDs provide more pertinent information, and we are providing more flexibility in how that information is conveyed to help ensure that fuel producers, distributors and retailers have the information they need to properly blend, track and label E15. For surveys of whether E15 is being properly blended and labeled, we are providing options that allow the businesses involved to match the geographic scope of an ongoing survey to their business plans and to share the cost of surveys among themselves as they see fit. We are also requiring that surveys collect RVP information for fuel samples labeled as E15 to help ensure implementation of the waiver condition that E15 be limited to 9.0 psi RVP in the summertime. In the aggregate, these measures will provide strong incentives for fuel providers to properly blend and label E15 and for consumers to avoid misfueling.

Relatedly, we are adopting our proposed interpretation that CAA section 211(h)(4) provides a 1.0 psi RVP waiver and related compliance provision only to gasoline-ethanol blended fuels containing between nine and 10 vol% ethanol, in light of the terms and legislative history of the relevant statutory provisions.

C. Other Mitigation Measures

EPA received a number of comments expressing concern that the proposed misfueling mitigation measures would not adequately mitigate misfueling. Several of the comments suggested that the Agency issue one or more additional measures in this final rule, although only a few commenters provided specific recommendations. A later section of this notice reviews those comments and EPA's analysis of several other measures. Overall, we concluded that the misfueling mitigation measures required by today's rule should be effective, and that requiring additional measures is not necessary or appropriate at this time.

As explained in the proposed rule, EPA drew on its experience with the recent transition to ultra-low sulfur diesel (ULSD) fuel in developing the E15 misfueling mitigation proposal. Several commenters contended that the transition to unleaded gasoline that occurred several decades ago provided more applicable lessons, including the need for additional mitigation measures. After considering those comments, and as fully discussed later in this notice, EPA continues to believe that the misfueling mitigation measures adopted today are reasonable, appropriate and sufficient to address E15 misfueling concerns. We expect that the E15 label will provide consumers with the key information they need to make appropriate fuel choices, and that the prohibition against misfueling will provide additional incentives for all parties to minimize misfueling. The PTD and survey requirements will provide fuel blenders, distributors and retailers with the information they need to properly blend, track and label E15 and confirmation that E15 has been properly made and sold. In addition to these required measures, retailers and other fuel providers may employ any other strategies they believe would further reduce the risk of misfueling under their particular circumstances. For example, retailers that serve a significant population of boat or small equipment owners can evaluate whether it is appropriate under their circumstances to post signs that specifically address misfueling of those products. We encourage consideration of additional measures as may be helpful in a fuel provider's specific circumstances. By taking additional, tailored steps, retailers and other fuel providers can provide examples of other misfueling mitigation measures that may also be effective in reducing the risk of misfueling.

In deciding what mitigation measures to require at this time, we also considered what we do, and do not, know about the introduction of E15 into the marketplace. The partial waivers that EPA has granted to E15 do not require that E15 be made or sold. The waivers merely allow fuel or fuel additive manufacturers to introduce E15 into commerce if they meet the waivers' conditions. Other Federal, state and local requirements must also be addressed before E15 may be sold. While EPA is working to address issues within its jurisdiction, it is ultimately up to businesses to decide whether, when and how to market E15. In light of the various decisions that need to be made by various parties, we expect that the transition to E15, like the transition to E10, will occur over several years and begin in some parts of the country before becoming broadly available. In the process, business decisions will be made about how to market E15 (*e.g.,* the price of E15 and its use for a particular grade of gasoline).

As the transition to E15 occurs, we plan to work with industry, state, environmental and consumer stakeholders to track developments and evaluate the effectiveness of the mitigation measures required by today's rule. We are already in the process of working with the ethanol industry and other stakeholders to help establish a public education and outreach campaign to assist fuel producers, distributors, retailers and consumers in understanding how E15 may be made, distributed, sold and used. Our recent experience with the transition to ULSD fuel shows that a stakeholder-led campaign can work synergistically with labeling requirements and provide another means of providing important information to everyone involved in fuel production, distribution and use. Establishing a similar campaign for E15 can also provide a forum for identifying and resolving any issues that may

[4] The FTC has experience designing labels to help consumers make informed decisions at the point-of-sale. *See, e.g.,* 16 CFR part 305 (EnergyGuide and Light Bulb labels); 16 CFR parts 306 and 309 (Automotive Fuel labels); and 16 CFR part 423 (Clothing Care labels).

develop as E15 moves into the marketplace.

D. Emissions Impacts of the Rule

These misfueling mitigation regulations are issued under CAA section 211(c) to mitigate and minimize the emission increases that would occur if E15 (or a higher gasoline-ethanol blend) is used in vehicles, engines, and products for which the E15 waiver was denied, specifically, MY2000 and older motor vehicles and all heavy-duty gasoline engines and vehicles, motorcycles and nonroad products. As described below in Section IV.F and in the E15 partial waiver decisions, our assessment of the potential emission consequences of E15 use indicates that the emission-related components of MY2001 and newer light-duty motor vehicles are durable for use on gasoline-ethanol blends up to E15. This conclusion is based on the results of the Department of Energy (DOE) Catalyst Study and other relevant test programs, as well as the Agency's engineering assessment of advances in motor vehicle technology and materials that have taken place in response to a series of important exhaust and evaporative emissions requirements since 2000 and in-use experience with E10.

Unlike for MY2001 and newer motor vehicles, there is very little, if any, test data with respect to the effect of E15 use in MY2000 and older light-duty motor vehicles and all heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products. In addition, our engineering assessment for these vehicles, engines, and products identifies a number of emission-related concerns with the use of E15 (or a higher gasoline-ethanol blend). For motor vehicles, these concerns include the potential for catalyst deterioration or catalyst failure as well as material compatibility issues that could lead to extremely elevated exhaust and evaporative emissions. For motorcycles and nonroad products, the misfueling concerns include the potential for elevated exhaust and evaporative emissions, as well as the potential for emissions impacts related to engine failure from overheating. It is not possible to precisely quantify the frequency at which these vehicles, engines, and products might experience problems with the use of E15. However, we believe that emission-related problems could potentially occur with enough frequency that the avoided emissions increases from reduced or prevented misfueling would more than outweigh the relatively low cost imposed by the required misfueling mitigation regulations. The potential emission increases from misfueling warrant today's action, even if a very low percentage of vehicles, engines, and products experience problems.

E. Related Regulatory Changes

In addition to misfueling mitigation measures, today's action also finalizes slight modifications to the RFG and anti-dumping (conventional) gasoline fuels programs to open the way for refiners and importers to produce and certify gasoline containing up to 15 vol% ethanol. For gasoline to be sold in the U.S., it must comply with the RFG and anti-dumping standards. To comply with the RFG and anti-dumping standards, the emissions performance of gasoline is calculated using a model, called the Complex Model, which predicts the emissions of regulated pollutants based on the measured values of certain fuel properties. The equations in the model were limited to an oxygen content of no more than 4.0% by weight in gasoline, which is the maximum possible amount of oxygen in E10. EPA has modified the Complex Model to allow fuel manufacturers to certify batches of E15 and made a related change to certain volatile organic compound (VOC) standards, in response to comments.

F. Liability Issues

In today's notice, EPA also addresses issues that many commenters raised concerning liability or responsibility for potential consequences of the use of, or transition to, E15. According to a number of commenters, fuel providers are unlikely to sell E15 until liability issues are resolved. EPA is not in a position to resolve all of the liability issues raised by commenters, but we do address those within our jurisdiction and clarify the responsibilities of various parties, including fuel producers, distributors, retailers, product manufacturers and consumers, for compliance with misfueling prohibitions and vehicle and engine warranty and other requirements under the Clean Air Act. In general, we believe the long-standing approach of EPA's fuels programs and warranty regulations to assigning respective responsibilities for compliance with our regulations is also appropriate for E15. We believe that the required label and other misfueling mitigation measures will minimize consumer use of E15 in vehicles, engines and products not covered by the partial waivers and any liability issues that might arise from or be attributed to misfueling with E15. A public outreach campaign is expected to reinforce the misfueling mitigation measures. Also, to the extent fuel providers determine that it is appropriate to further reduce the risk or potential of consumer misfueling, they may take additional misfueling mitigation measures that they believe could be useful in showing they did not encourage or otherwise cause the misfueling.

With regard to other transition issues within EPA's jurisdiction, we are continuing to make progress in developing guidance for determining whether existing underground storage tank systems are compatible for storing E15. We also plan to work with stakeholders to monitor and facilitate efforts to address other transition issues involving state, local and other requirements.

G. Petition for Rulemaking To Require the Continued Availability of E10 and/or E0

On March 23, 2011, EPA received a petition for rulemaking that EPA promulgate a rule under its Clean Air Act section 211(c) authority to ensure the continued availability of gasoline containing 10 vol% or less ethanol (''≤E10'') at retail stations for use in vehicles, engines, and equipment not covered by the E15 partial waivers. EPA also received a number of comments on the proposed rule similarly requesting that EPA ensure that ≤E10 be made available. For the reasons discussed in section III.F, the Agency is not requiring the availability of E10 (or E0) in this rulemaking and is also denying the rulemaking petition. In considering the future availability of ≤E10, it is important to remember that EPA's partial waiver decisions allow, but do not require, E15 to be sold. It is up to businesses to decide whether and how to produce and sell E15 for MY2001 and newer light-duty motor vehicles. EPA recognizes that the availability of appropriate fuels is important for mitigating misfueling, but we cannot forecast now how E15 will be distributed and marketed over the next several years, and how this might impact the availability of ≤E10. Until E15 enters the market and further developments take place, requiring the continued availability of E10 (or E0) would be premature and potentially unnecessary. As the transition to E15 occurs, we will work with fuel producers, distributors, and marketers to monitor the availability of E15, E10, and E0 so that any problems can be addressed on a timely basis.

II. Background

A. Statutory Authority

CAA section 211(f)(1) makes it unlawful for any manufacturer of any

fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in motor vehicles manufactured after model year 1974 unless it is substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act.

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator may waive the prohibition of section 211(f)(1). A waiver may be granted if the Administrator determines that the applicant has established that the fuel or fuel additive, and the emission products of such fuel or fuel additive, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance with the emission standards to which the vehicle or engine has been certified. In other words, the Administrator may grant a waiver for an otherwise prohibited fuel or fuel additive if the applicant can demonstrate that the fuel or fuel additive will not cause or contribute to engines, vehicles or equipment failing to meet their emissions standards over their useful life.

EPA previously issued a ''substantially similar'' interpretive rule for unleaded gasoline which allows oxygen content up to 2.7% by weight for certain ethers and alcohols.[5] E10 contains approximately 3.5% oxygen by weight, which means E10 is not ''substantially similar'' to certification fuel under the current interpretation. As explained at 44 FR 20777 (April 6, 1979), E10 received a waiver of the substantially similar prohibition by operation of law because EPA did not grant or deny a waiver request for E10 within 180 days of receiving that request. At the time of the E10 waiver request, CAA section 211(f)(4) provided for waivers to be granted by operation of law, but that aspect of section 211(f)(4) was later removed by the Energy Independence and Security Act of 2007.

Section 211(c)(1) of the Act allows the Administrator, by regulation, to ''control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle (A) if, in the judgment of the Administrator, any fuel or fuel additive or any emission product of such fuel or fuel additive causes, or contributes, to air pollution or water pollution (including any degradation in the quality of groundwater) that may reasonably be anticipated to endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.'' The regulations adopted today are pursuant to this authority, as well as the recordkeeping and information collection authority under CAA sections 208 and 114.

B. E15 Partial Waivers

In 2009, Growth Energy and 54 ethanol manufacturers submitted an application under section 211(f)(4) of the CAA for a waiver for gasoline-ethanol blends of up to 15 vol% ethanol.[6] On April 21, 2009, EPA published notice of receipt of the application and requested public comment on all aspects of the application to assist the Administrator in determining whether the statutory basis for granting the waiver request had been met (74 FR 18228).

On October 13, 2010, EPA took two actions on the waiver request based on the information available at that time (''October Waiver Decision'').[7] First, it partially approved Growth Energy's waiver request to allow the introduction of E15 into commerce for use in MY2007 and newer light-duty motor vehicles, subject to several conditions. The October Waiver Decision was based on a determination that E15 will not cause or contribute to a failure of MY2007 and newer light-duty motor vehicles to achieve compliance with the emissions standards to which they were certified under section 206 of the CAA over their useful lives. Second, the Agency denied the waiver request for MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and other nonroad engines, vehicles, and equipment. The Agency also deferred making a decision on the waiver request for MY2001–2006 light-duty motor vehicles to await the results of additional testing being conducted by the Department of Energy (DOE). On January 21, 2011, EPA partially approved Growth Energy's waiver request to allow the introduction of E15 into commerce for use in MY2001–2006 light-duty motor vehicles after receiving and analyzing the completed DOE test data (''January Waiver Decision'').[8]

EPA issued the partial waiver decisions with several conditions. The conditions apply to the parties upstream of the point of the addition of ethanol who are subject to the partial waiver (gasoline refiners/importers, ethanol producers/importers, and ethanol blenders that introduce E15 into commerce), and are designed to ensure that when E15 is introduced into commerce, it will only be used in the appropriate light-duty motor vehicles. Some of the conditions call for the ethanol blenders, fuel manufacturers (gasoline refiners/importers), and fuel additive manufacturers (ethanol producers/importers) to take various actions to control the distribution and use of their product so that E15 is only used in approved motor vehicles. The partial waiver decisions impose different conditions on the different parties. Gasoline refiners/importers, ethanol producers/importers, and ethanol blenders that introduce E15 into commerce are all responsible for making sure that appropriate labeling occurs on fuel pumps to mitigate potential misfueling. These parties are also responsible for conducting fuel pump labeling surveys to ensure that the correct gasoline-ethanol blends are loaded into the appropriate tanks at retail stations and that fuel pumps are properly labeled. Gasoline refiners/importers, ethanol producers/importers, and ethanol blenders must also use PTDs to properly document information regarding the ethanol blends to help ensure proper blending and distribution.

C. The Proposed Misfueling Mitigation Measures Rule

On October 13, 2010, EPA issued a proposed rule to mitigate misfueling and maximize the likelihood that E15 is used only in vehicles for which its sale is approved. As we explained, the proposed rule was developed to help ensure that E15 is introduced into commerce for use only in MY2001 and newer light-duty motor vehicles and in flexible-fueled vehicles, and not for use in any other vehicles, engines or equipment.[9] Some of the proposed regulatory provisions parallel the partial E15 waiver decision conditions and were expected to be an effective and

[5] 56 FR 5352 (February 11, 1991).

[6] Since E15 has greater than 2.7 weight percent oxygen content, E15 needs a waiver under CAA section 211(f)(4).

[7] 75 FR 68094 (November 4, 2010).

[8] 76 FR 4662 (January 26, 2011).

[9] 75 FR 68044 (November 4, 2010).

efficient way to further reduce the potential for in-use emissions increases that could result from misfueling with E15.

EPA held one public hearing regarding the proposed rule on November 16, 2010, in Chicago, IL. The public comment period for the proposal ended on January 3, 2011, and approximately 80 public comments were submitted. Today's final rule contains a brief summary of the major comments received, and our responses, on several topics, including the proposed misfueling mitigation measures, changes to the Complex Model, and other issues discussed in the proposal. Responses to comments not addressed here can be found in a separate document entitled ''E15 Misfueling Mitigation Measures Rule Response to Public Comments'' which is available in the public docket for this rule.

D. Reasons for the Actions in This Rulemaking

In granting partial waivers for E15, EPA imposed various conditions on fuel or fuel additive manufacturers that use the waivers, including conditions designed to minimize the potential for misfueling. Under CAA section 211(f)(4), EPA can place conditions on fuel or fuel manufacturers but cannot place conditions directly on other parties in the fuel distribution system. Consequently, EPA placed the partial waiver conditions on ethanol blenders, fuel manufacturers, and ethanol producers, the parties subject to the prohibition in section 211(f)(1), and thus the parties that benefit from the partial waiver of that prohibition if they choose to make and distribute E15, but not on retail stations. Since most retail stations are independently owned and operated, the ethanol blenders, fuel manufacturers, and ethanol producers that decide to introduce E15 into commerce might need to develop and enforce business arrangements with a potentially large number of retail stations in order to meet the partial waiver conditions.

EPA believes that the provisions adopted in today's final rulemaking (*i.e.* misfueling prohibition, fuel pump labeling, PTDs, and ongoing implementation surveys) are a direct and efficient way to further reduce the potential for misfueling and the emission increases that would result from misfueling. Under CAA section 211(c), EPA has the authority to adopt appropriate controls or prohibitions on the distribution and sale of fuels and fuel additives to avoid emissions increases. EPA's use of this authority in today's rule will do that with respect to E15 that is introduced into commerce in accordance with the partial waivers. It provides EPA with appropriate tools for regulatory oversight of the ethanol blenders, fuel manufacturers, ethanol producers and others introducing E15 into commerce. It adopts provisions that create additional, strong incentives to properly blend and label E15 and avoid misfueling. The new provisions, collectively and in tandem with the partial waiver conditions, will maximize the likelihood that E15 is used only in motor vehicles covered by the partial waivers and minimize the potential for emissions increases that might otherwise occur. The specific provisions are discussed in detail in Section III, and the relationship between these provisions and the conditions in the partial waivers is described in Section IV.G. By making misfueling mitigation more efficient and effective, these measures should also have the benefit of facilitating the successful introduction of E15 into commerce.

III. Misfueling Mitigation Program

As explained above, CAA section 211(c) authorizes EPA to control or prohibit the distribution of a fuel or fuel additive when it will significantly impair emission control systems or when the emission products from that fuel or fuel additive will cause or contribute to air pollution that we reasonably anticipate may endanger public health or welfare. As described in detail below, EPA is exercising this authority to establish a prohibition on the use of gasoline containing more than 10 vol% ethanol in vehicles, engines and equipment not covered by the partial waiver decisions (*i.e.,* MY2000 and older light-duty motor vehicles, and in all heavy-duty gasoline engines and vehicles, motorcycles and nonroad products) in order to prevent or minimize emission increases that could otherwise occur. We are also requiring gasoline retail stations and wholesale purchaser-consumer facilities that sell E15 to properly label their E15 pumps. To effectuate these prohibitions, and to more generally limit the use of E15 to MY2001 and newer light-duty motor vehicles, we are also requiring that relevant information be conveyed by PTDs, and that a survey designed to demonstrate compliance with labeling, ethanol content and related requirements be conducted.

As we described in our proposed rule, there are four important components of an effective E15 misfueling mitigation strategy. First, a prohibition on misfueling establishes a legal barrier against production, distribution, sale or use of gasoline containing more than 10 vol% ethanol in vehicles, engines and equipment not covered by the partial waiver decisions because of the potential consequences for emissions standards compliance violations by those vehicles, engines and equipment. The prohibition is broadly applicable, including to consumers. Second, effective labeling is needed to provide consumers with the information they need to avoid misfueling, including information about the prohibition on misfueling and the potential consequences of misfueling. To be effective, labeling must be done at the point of sale where the consumer is choosing which fuel to use. Third, retail stations, wholesale purchaser-consumers and fuel blenders need assurance regarding the ethanol content and RVP of the fuel (or blendstock) that they purchase so they can properly blend, store and label E15 and other fuels. The use of proper documentation in the form of PTDs has proven to be an effective means of ensuring that retail stations and other fuel providers know what fuel they are purchasing. Fourth, appropriate labeling and fuel sampling surveys are necessary to ensure implementation of E15 content, RVP and labeling requirements that are in turn important to mitigating misfueling and the emissions consequences of misfueling. Today's rule adopts provisions covering all of these areas. The Agency has used this general strategy to implement several fuels programs, including the unleaded gasoline program, the RFG program, and the ULSD program. The fourth component of an effective misfueling mitigation strategy is public outreach and consumer education. Our experience has shown that consumers need to be engaged through a variety of media to ensure that accurate information is timely conveyed to the owners and operators of vehicles, engines and equipment.

EPA proposed establishing a misfueling prohibition and E15 labeling, PTD and survey requirements, and sought comments on those and any additional mitigation measures that might be needed to minimize misfueling with E15. The following sections of this final rule describe each of the proposed measures, the comments we received about that measure, our response to those comments, and the final decisions we made in light of the comments and other available information. We also discuss several suggestions that some commenters made for other possible mitigation measures, and our

conclusion that no additional measures should be required at this time.

A. Misfueling Prohibition

We proposed to prohibit the use of gasoline containing more than 10 vol% ethanol in vehicles, engines and equipment not covered by the partial waiver decisions, specifically MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, on and off-highway motorcycles, and nonroad engines, vehicles, and equipment.[10] The prohibition is similar in nature to the prohibition on producers of fuels and fuel additives under section 211(f)(1). However, the prohibition in section 211(f)(1) only applies to these upstream parties. The proposed prohibition would also apply at the retail level as well as to upstream fuel providers and consumers, so that all parties involved in fueling gasoline-powered products would have a legal obligation to avoid misfueling the vehicles, engines and equipment not covered by the partial waivers.

Most public commenters that addressed this provision supported it in view of EPA's decision to deny a waiver for introduction of E15 into commerce for use in MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products. EPA based its denial on the lack of test data on the effect of E15 on emissions from these products and the Agency's engineering judgment that E15 would likely result in significant exceedances of emission standards by these products.

Several commenters disputed the need for a misfueling prohibition because, in their view, E15 would not have adverse emissions consequences for the vehicles, engines and equipment not covered by the partial waivers. In making this argument, the commenters were essentially taking issue with EPA's decision to deny the E15 waiver for these products. However, the commenters did not provide, and EPA is not aware of, any new information or analysis that would support a finding that E15 may be used by the vehicles, engines and equipment not covered by the partial waivers without significant adverse consequences for their emission control performance. We are therefore finalizing the misfueling prohibition as proposed.

B. Fuel Pump Labeling Requirements

1. Proposed Approach

We proposed that gasoline pumps dispensing E15 be labeled and that this label be applied to any pump dispensing gasoline containing greater than 10 vol% ethanol but not more than 15 vol% ethanol. We also solicited comment on whether separate labels should be required for other gasoline-ethanol blends to avoid potential consumer confusion.

Specifically, we proposed that the language on the E15 label have four components: (1) An ethanol content information component; (2) a legal approval component; (3) a technical warning component; and (4) a legal warning component. We explained that together these four components highlight the critical information that we considered necessary to inform consumers about the legal and appropriate use of E15 and the potential consequences of illegal and inappropriate uses.

The ethanol content information component of the label informs consumers of the maximum ethanol content the fuel may contain. We proposed that this component of the label read: ''This fuel contains 15% ethanol maximum.''

The legal approval component of the label includes information that informs consumers of the types and model years of vehicles for which E15 may be used. At the time of the proposal, EPA had granted a partial waiver of E15 allowing its sale for use only in MY2007 and newer light-duty motor vehicles. Based on that partial waiver, the Agency proposed that the legal approval portion of the label read as follows:

Use only in:
2007 and newer gasoline cars.
2007 and newer light-duty trucks.
Flex-fuel vehicles.

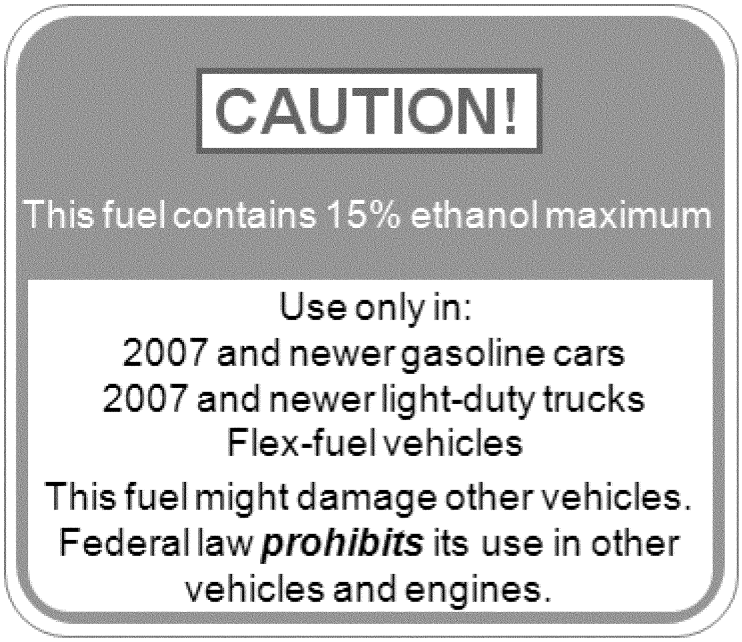
As noted above, EPA later issued a second partial waiver decision that allowed E15 to be introduced into commerce for MY2001–2006 light-duty motor vehicles. Taken together, the two partial waivers allow E15 to be sold for use in MY2001 and newer light-duty motor vehicles, as well as in vehicles designed and certified to run on gasoline and gasoline-ethanol blends as high as E85 (''flex-fuel vehicles''). EPA noted in the proposed rule that if we granted a partial waiver for MY2001–2006 light-duty motor vehicles, we would modify this component of the final label accordingly.

The technical warning component of the label alerts consumers that use of E15 in other engines, vehicles, and equipment might cause damage to these products. This warning reflects the results of EPA's analysis of available test and other data and its engineering assessment concerning the potential impact of E15 on emission controls and other aspects of vehicle design, materials and operation that can affect emissions. EPA proposed the following language: ''This fuel might damage other vehicles or engines.'' We also proposed that the word ''Caution'' be placed at the top of the label, and solicited comment on other words that could be used to alert consumers, and specifically asked for comment on the alternative word ''Attention.''

The legal warning component of the label informs consumers that using E15 in a vehicle or engine for which E15 is not allowed violates the Agency's prohibition against misfueling. Based on the language currently used on the low-sulfur diesel (LSD) label (see 40 CFR 80.570), the Agency proposed that the E15 label read as follows: ''Federal law prohibits its use in other vehicles and engines.''

Putting the four components together in a manner intended to attract consumers' attention, the Agency proposed the following E15 label:

[10] Flexible fuel vehicles (FFVs) are designed to meet EPA's emissions standards on any blend of gasoline and ethanol up to 85% ethanol. FFVs are not subject to either the waiver denial or the misfueling prohibition adopted in this rule.



2. Consideration of Comments

We solicited comments on the above label, where it should be placed and whether labeling should be required for three other levels of gasoline-ethanol blends: (1) E10; (2) blends containing between 15 and 85 vol% ethanol; and (3) E85. We also sought advice from the FTC's labeling experts and discussed with FTC staff the issue of labeling additional gasoline-ethanol blends, which FTC was considering for other purposes. We shared with FTC staff the suggestions made in public comments on the proposed E15 label, and they provided us with information about effective label design, recommendations for addressing some of the issues raised in the comments, and assistance in designing the final label. We also considered the appropriateness of coordinating EPA labels and FTC labels.

Most of the public comments on the proposed E15 label made specific recommendations for improvement with respect to wording and/or design. Overall, there was a wide spectrum of suggestions reflecting the different perspectives of ethanol producers, oil refiners, gasoline retailers, and manufacturers and users of vehicles, engines and equipment. Commenters generally agreed with the need for labels, but differed about how best to alert consumers and provide them with information for avoiding misfueling, without discouraging or chilling appropriate use of E15 in MY2001 and newer light-duty motor vehicles. One commenter also recommended that EPA allow fuel providers to develop and submit for approval an alternative label, a flexibility afforded by the Agency's ULSD program. Specific suggestions fell into the following categories which are discussed in more detail below:

- Choice of word for warning.
- Description of vehicles that can use E15.
- Prohibition statement.
- Statement about E15 causing damage.
- Addressing non-English speakers.
- Portable gasoline containers.
- Color, shape, and placement of labels.
- Separate labels for different levels of ethanol.

a. Choice of Word for Warning Component

Commenters were divided between those who believed that use of ''CAUTION!'' on the proposed label would deter appropriate use of E15, and those who believed that it would not be effective at preventing misfueling. Two commenters stated that any kind of a warning word may result in skepticism and concern about E15 use in MY2001 and newer light-duty motor vehicles, and suggested that no warning word be used. They argued that the proposed label would not promote the successful introduction of this new fuel into the marketplace. Other commenters expressed concern that the proposed label was not strong enough and recommended that ''WARNING'' or ''STOP'' be used. In these commenters' opinion, the label on its own must provide for adequate informed consent to prevent misfueling and consumer lawsuits concerning possible damage from misfueling.

The purpose of today's rule is to mitigate potential misfueling and the emissions increases that could occur as a result of misfueling. We are therefore exercising our authority to address the emission consequences of misfueling. The Agency recognizes, however, that while the label needs to effectively communicate to consumers about misfueling, it should avoid deterring E15's use in motor vehicles for which its sale and use is allowed. We discussed this issue with FTC's consumer labeling experts who advised that the word ''ATTENTION'' would more likely attract consumer notice without the risk of discouraging appropriate use of the fuel.

After considering the comments and FTC's advice, we are finalizing use of ''ATTENTION'' instead of ''CAUTION.'' Use of ''ATTENTION'' strikes the right balance between alerting consumers about the improper use of E15 and scaring them away from appropriate use of E15. FTC staff also suggested that ''ATTENTION'' be placed at an angle in the upper left corner of the label to help draw consumers' eyes to it (see Section III.A.2. for further details), and we are adopting that placement. We believe that ''ATTENTION'' so placed, and in combination with other label information alerting consumers to the potential for damage from misfueling (discussed below), will effectively communicate that care must be taken in fueling with E15 without unduly discouraging its proper use.

b. Description of Motor Vehicles That Can Use E15

Many commenters suggested rewording the label's references to the motor vehicles that can use E15 to clarify and/or streamline those references. Several also suggested that the label state that E15 is ''*Approved* for use in 2001 and newer vehicles'' (emphasis added). Two commenters noted that use of E15 in flex-fuel vehicles is independent of model year and that flex-fuel vehicles should be listed first. Some commenters expressed concern that sport utility vehicles (SUVs) and minivans were not explicitly mentioned in the label even though both vehicle types fall within the definitions of light-duty vehicles, light-duty trucks, or medium-duty passenger vehicles and are covered by the partial waivers. They suggested that there be a consumer-friendly reference for these vehicles.

We agree with commenters that the language can and should be clarified and streamlined in a way more readily understood by consumers. The partial waivers allow E15 to be sold for use in MY2001 and newer ''light-duty motor vehicles,'' meaning cars, light-duty trucks and medium-duty passenger vehicles. Light-duty trucks and medium-duty passenger vehicles are regulatory terms that encompass a range of vehicles including minivans and all but the largest pick-up trucks (greater than 8,500 pounds gross vehicle weight rating) and some SUVs (greater than 10,000 pounds gross vehicle weight rating). FTC staff generally advised that the E15 label be as concise as possible since consumers are much less apt to read detailed labels, particularly in the context of routine activities like buying gasoline. With that in mind, we are finalizing the phrase ''2001 and newer passenger vehicles'' as the reference to the types of gasoline-fueled motor vehicles that may use E15. The common denominator of virtually all of the relevant vehicle types is that they are used to transport people. ''Passenger vehicle'' is a common term and should be more effective in conveying the types of gasoline-fueled motor vehicles for which E15 can be sold and used. Since all flex-fuel vehicles are made to use gasoline-ethanol blends up to E85, all may use E15.

We are leaving the reference to passenger vehicles first in the list of the types of motor vehicles that can use E15. In most of the country, gasoline-fueled vehicles are much more common than flex-fuel vehicles, and under the partial waiver decisions E15 is approved for use in only MY2001 and newer passenger vehicles. The reference to passenger vehicles and the model year limitation is thus more relevant and important to more consumers, and so should precede the reference to flex-fuel vehicles.

We are not adopting the suggestions to include the phrases ''approved for use in'' or ''model year'' in referring to the vehicle types that may use E15. EPA's partial waiver decisions are not approvals for use of E15 in the general sense that term is used; they are waivers allowing E15 to be introduced into commerce for use in certain motor vehicles. The Agency's role in the waiver proceeding is limited to determining whether E15 meets the criteria for a waiver under CAA section 211(f)(4) and in this rulemaking under section 211(c) to minimizing the potential for any misfueling that might occur. As for prefacing the reference to 2001 and newer passenger vehicles with ''model year,'' any potential benefit of adding that phrase is outweighed by the risk that the additional wording may decrease the effectiveness of the label. Consumers are likely to understand the reference to 2001 as indicating model year, and we are mindful that labels with more words are less apt to be read.

Therefore, today's final rule will require the following language on the label:

''Use only in:

- 2001 and newer passenger vehicles;
- Flex-fuel vehicles''.

c. Statements About Prohibition and Damage

Commenters were generally supportive of the proposed statements on prohibition and damage, but suggested variations in the wording and order of the statements to clarify their scope and meaning. Most commenters stated that it is essential to include a statement that ''this fuel may damage'' other vehicles, engines and equipment for consumers to have the information they need to avoid misfueling. However, several commenters objected to including any damage statement because they believe available information does not support that E15 may cause damage. In contrast, one commenter argued that the proposed damage statement should communicate that, in the commenter's view, significant physical injuries may result from using E15 in lawn mowers, chain saws, and other equipment.

A number of commenters noted that the proposal's reference to other ''vehicles and engines'' would not necessarily convey the various kinds of gasoline-powered equipment that should not use E15. Specifically, one commenter pointed out that ''engine'' is not a term that consumers use to describe lawn and garden equipment, boats and other nonroad equipment. Two commenters suggested using graphic symbols or icons to depict some of the common types of nonroad vehicles and equipment for which E15 use would be prohibited. One commenter provided sample icons of a boat, motorcycle, chainsaw, lawnmower and snowmobile, each depicted in a circle with a slash or X across the image to convey to consumers that E15 should not be used in those products. Along the same lines, one commenter suggested including on the label a list of the various kinds of vehicles, engines and equipment that should not use E15.

Other commenters provided further suggestions for improving the wording of the damage and prohibition statements. Three commenters suggested that the label clarify that ''Federal law prohibits use in *all* other vehicles and *nonroad* engines *and equipment.''* Another stated that the label should be consistent with other EPA labels and should state: ''Federal law prohibits use in *all other model year* vehicles and engines.'' (Suggested additional words in italics.)

In addition to the prohibition and damage statements, some commenters suggested adding to the label statements that fuel economy would be adversely affected and that consumers should consult manufacturers' fuel recommendations. These commenters pointed out that ethanol has somewhat lower energy content than gasoline and, when ethanol is cheaper than gasoline, E15 might be priced lower than E10 or E0. These commenters argued that without an understanding of the relationship between energy content and fuel price, many consumers might intentionally misfuel vehicles, engines, and equipment not covered by the partial waivers if E15 appeared to be a better bargain than E10 or E0.

After considering all of the comments, we continue to believe that a damage statement is necessary and appropriate for the E15 label. As explained in the October Waiver Decision, EPA denied the E15 waiver request with respect to MY2000 and older light-duty motor vehicles and all heavy-duty engines, motorcycles and nonroad equipment because (1) Available data is insufficient to show that E15 would not cause or contribute to a failure by these products to meet emission standards, and (2) our engineering judgment is that E15 may adversely affect the emissions control performance of these products, particularly over time. The waiver decisions also considered materials

compatibility, operability, and maintenance issues related to E15 and their potential impact on emissions. A statement that E15 use in those products ''may cause damage'' is consistent with and supported by EPA's technical analysis for its decision to deny the waiver request for introduction of E15 into commerce for use in these products. Including the damage statement is also critical to the effectiveness of the E15 label, since consumers are more likely to comply with the label's direction if they understand that harm might otherwise occur.

We do agree with commenters' suggestion that a reference to ''equipment'' is needed on the label. The label as proposed used the word ''engines'' to refer to engines in all nonroad equipment. After considering the comments, we agree that most consumers think in terms of the types of equipment they own or operate, not the engines that power the equipment. However, given the extremely broad range of equipment that uses gasoline engines, we believe it would be infeasible and counterproductive to attempt to include even a partial list of the types of products that should not use E15. As noted above, labels generally need to be brief and succinct to be effective. Also, a partial list would run the risk of implying that types of equipment not included on the list are suitable for E15 use. We are therefore choosing the phrase ''gasoline-powered equipment'' to refer to the many types of equipment that have gasoline engines. We are also including a reference to boats since many consumers may not consider boats to be either ''vehicles'' or ''equipment.'' Moreover, representatives of boat manufacturers and users expressed particular concerns about the potential for, and consequences of, misfueling boat engines.

We are otherwise combining and revising the wording of the prohibition and damage language on the label to reduce the number of words and increase the directness, and therefore the effectiveness, of the message, in a manner suggested by FTC staff.

We are not adopting some commenters' suggestions that the label provide a warning that injury might occur if misfueling results in product malfunction. In considering all the information before the Agency (*i.e.* test data and other information provided by the waiver applicants and in public comments submitted on the waiver and on the proposed rule), we determined that the information does not provide a clear enough basis for including a separate warning about risk of injury in addition to the warning about the potential for damage.

We disagree with the suggestion to include a statement that fuel economy would be adversely affected by use of E15. While ethanol has a lower energy content than gasoline,[11] the effect of E15 (or E10) on the fuel economy of a particular model or vehicle depends on a number of factors (*e.g.,* fuel formulation, engine calibration, manner of vehicle operation, *etc.*) that cannot be easily communicated on a label. To the extent the appropriate information were added to the label, consumers may be less likely to read the label at all. In light of the trade-off between providing more, somewhat complex information and decreasing the likelihood that the label will be read and heeded, we believe that the damage statement will be more effective in mitigating misfueling on its own than in combination with fuel economy information. The costs associated with potential damage of the engine or replacement of catalysts (see section IV.A for a description of the costs associated with these repairs) are significant and likely to provide sufficient incentive not to misfuel with E15. Fuel providers may use supplemental labels, signs or other forms of communication to inform their customers of the potential fuel economy impacts of the various types of gasoline and gasoline-ethanol blends that they sell.

We also disagree with the suggestion to include a statement that consumers should consult the manufacturer's fuel recommendation. Mention of manufacturers' fuel recommendations may confuse consumers, since E15 only recently received partial waivers allowing its sale for use in certain vehicles. It is not yet available in the marketplace, and thus would not be specifically referenced in any existing manual or manufacturer's specifications.

Today's final rule will therefore require the following damage and prohibition message at the bottom of the label:

''Don't use in other vehicles, boats, or gasoline powered equipment. It may cause damage and is *prohibited* by Federal law.''

We carefully considered the suggestion to add graphic icons to the label to help convey what products can, or cannot, use E15, and have decided not to require icons for several reasons. First, the icons suggested for the on-highway vehicles that can, or cannot use, E15 rely on text to convey much of their message. Those icons also depict a passenger car, which is only one of several vehicle types that can use E15 if from the specified model years. In addition, the other icons portray only some of the nonroad vehicles and equipment that cannot use E15, raising the issue noted above concerning partial lists: Depicting some equipment but not other equipment may lead consumers to think E15 can be used in the types of equipment not depicted. Use of multiple icons would also make the label more dense and complicated.

In light of these considerations, we are not including icons in the final label. However, fuel providers may post supplemental labels or signs that they believe would be useful for informing their customers. We are also adopting the suggestion made by one commenter to allow fuel providers to submit to EPA for approval an alternative label. There are a number of circumstances that may make it appropriate for a retailer to make small changes in the shape or size of the label and/or include additional information. (It should be noted that the addition of information, including icons, would require enlarging the label so that all of the information on the label may be easily read). To the extent a fuel provider believes icons would be helpful to its customers, it may post them on its own signs and/or develop and submit an alternative E15 label including appropriate icons for EPA consideration and approval.

d. Addressing Non-English Speakers

Two commenters expressed concern that the label needs to accommodate non-English speakers, and pointed out that a relatively high percentage of commercial landscapers that purchase fuel for lawn, garden, and forestry products may not be able to read or comprehend an English-narrative label. They suggested that the final label should contain generic symbols or icons to clearly and strongly convey the necessary warnings.

We have addressed the use of icons above, but have also considered whether labels in other languages should be used. We appreciate the importance of conveying the necessary information to those who do not speak or read English. However, we are not requiring multi-

[11] Ethanol has approximately 33 percent less volumetric energy content than conventional gasoline (*see* CITE RFS2 *RIA*). A recent study by the Department of Energy involving 16 light-duty vehicles from model years 1999 to 2007 found that, when compared to E0, the average reduction in fuel economy was 3.7 percent for E10, 5.3 percent for E15, and 7.7 percent for E20 (see National Renewable Energy Laboratory, Oak Ridge National Laboratory, *Effects of Intermediate Ethanol Blends on Legacy Vehicles and Small Non-Road Engines, Report 1—Updated* (February 2009).

lingual labels at this time because we do not have enough information to determine under what circumstances one or more additional languages should be added to the label. The commenters suggesting that labels accommodate non-English speakers did not provide information that would allow us to make these determinations. Also, a label in two or more languages would necessarily be longer and may detract from the effectiveness of the label as a whole. We will continue to consider whether bi- or multi-lingual signs would be appropriate, and will work with stakeholders to address this issue through public outreach and education as E15 enters the market. As noted above, retailers may also post additional labels or signs, including in other languages. Further, today's rule provides the option of seeking EPA approval of an alternative label that could incorporate languages in addition to English. Under the regulations, retailers could submit translated versions of the final label to EPA for approval. Retailers thus have the flexibility to use signs and/or labels conveying information in any language they believe is appropriate for their customers.

e. Portable Fuel Containers

Some commenters expressed concern that the label by itself would not be effective at preventing misfueling of boats and other nonroad vehicles and equipment. The commenters pointed out that nonroad products are generally fueled from portable containers, which are in turn fueled at the same time and location that motor vehicles are fueled. The commenters stated that any fuel dispensing nozzle used to fill a motor vehicle could also be used to fill the portable container. One commenter urged that the labels for pumps dispensing fuels greater than E10 should also warn against those fuels being dispensed into portable containers.

We considered this suggestion but have decided that prohibiting the dispensing of E15 into portable containers is not necessary or appropriate. The prohibition established by today's rule extends to misfueling of E15 into nonroad products, including by use of portable containers, so a separate ban on E15 use in portable containers is not needed to effectuate the prohibition. Banning use of such containers for E15 would also prevent their legitimate use, including in emergencies, for motor vehicles that may fuel with E15. The outreach campaign being developed can help consumers understand that use of E15 in portable containers is limited to fueling the types of motor vehicles that may use E15.

f. Color, Size, Shape, Font, and Placement of the Label

There was general agreement among commenters that labels for gasoline-ethanol blends should be uniform in color, size, and shape for easy identification. Commenters were divided, however, on what the color and shape should be, with some commenters focused on what combination would stand out and/or be more legible, and others emphasizing coordination with other labels. Several different color schemes, including FTC's for its proposed gasoline-ethanol blend labels, were suggested. Shapes other than squares were also urged, with octagonal and triangular shapes specifically recommended since they are already associated with stop and hazard signs, respectively.

One commenter recommended that rather than requiring a one-size-fits-all label, EPA should allow gasoline marketers to determine the color scheme and appropriate size of the E15 label. Another commenter specifically cited experience with EPA's ULSD regulations, which did not specify the color and size of the labels required for that program. This commenter pointed out that while retailers initially welcomed the opportunity to design their own labels, ultimately the lack of consistency in label design resulted in confusion and uncertainty with respect to compliance and enforcement. The commenter recommended that EPA should adopt specific label size, color, dimension and design requirements similar to those specified for dispenser labels under FTC regulations.

With respect to placement of the label, commenters generally suggested that labels should be placed directly above, below or next to the E15 pump nozzle or the button a consumer would use to select E15 from among several fuel choices. One commenter recommended that for pumps that use one hose to dispense several grades of gasoline the label should be on the button for selecting the grade for which E15 is used. For pumps with multiple hoses, this commenter suggested the label could appear in the same location as the octane ratings for the other hoses (or above/below the octane rating).

We agree with commenters that the E15 label design should generally be uniform for easy identification and utility. Significant variations in label design could thwart the goal of associating the label with E15 and making the label readily recognized and understood. At the same time, we recognize that slight modifications in size or shape may be useful or appropriate for a retailer's particular circumstances. For example, some slight changes in shape may be necessary to allow the label to be placed where consumers will see it when they are selecting what fuel to buy. The flexibility afforded by today's regulations will give retailers the option to develop an alternative label that works with their pumps. However, alternative labels must include the four required components of the E15 label, must be as legible as the required label, and must be similar enough in design that their use would not confuse consumers or undermine the utility of relatively consistent labeling of E15.

We have decided to use FTC's proposed color scheme and general design so that the two agencies' labels could work together as a coordinated labeling scheme for gasoline-ethanol blends. FTC recently deferred making a decision on the ethanol labeling portion of their proposed fuel rating rule because more time was needed to address the issue.[12] FTC's proposal was based in part on existing FTC rules for labeling alternative fuels (see 16 CFR parts 306 and 309). Those rules specify the color scheme that the FTC used for its proposed labels for gasoline-ethanol blends. The FTC's alternative fuel labels provide a generally consistent color scheme for alternative fuels so consumers may readily recognize pumps and other dispensers that deliver those fuels. In view of the existing FTC rules for alternative fuel labeling and FTC's further consideration of gasoline-ethanol blend labeling, we are adopting the proposed FTC color scheme so that E15 labels may become part of a broader, coordinated scheme for labeling alternative fuels in general and gasoline-ethanol blends in particular. Consumers are more likely to understand the import of both agencies' labels if they see relatively consistent labels across the relevant types of fuel. In addition, FTC's proposed labels uses colors, fonts, shape and other design aspects that make its labels noticeable, easily understood, and consistent with labeling conventions. An E15 label similar in appearance should thus be similarly effective. We also note that we varied the font size of different parts of the E15 label in light of FTC consumer labeling staff advice that use of larger fonts for the most important information

[12] FTC press release ''FTC Issues Final Amendments to Its Fuel Rating Rule, Including New Octane Rating Method'' available at *http://www.ftc.gov/opa/2011/03/fuellabel.shtm* [accessed March 21, 2011].

would help draw consumers' attention and make it more likely they would read the label.

We agree with the comments that the label should be placed where consumers will see it when they are selecting which fuel to buy. We recognize, however, that pump designs vary widely and evolve over time. In particular, pumps that use one hose to dispense several grades of gasoline raise the issue of where to place the label so that it is associated with the selector button for E15 fuel. Given the wide variety of pumps, we are not specifying the exact placement of the label on every type of pump, but we are requiring that retailers place the E15 label where consumers will see it when they are making their fuel selection. In the case of pumps with one nozzle dispensing several grades of gasoline, the regulations direct the retailer to place the label above the selector button dispensing E15 or otherwise place it so that it is clear which button is dispensing E15. Using the flexibility afforded by the regulations for alternative labels, some retailers may want to put a variation of the E15 label on the selector button itself.

We note also that in response to our request for comment on whether the designation of ''E15'' be placed at the top of the label, many commenters agreed that this should be done. Today's rule will require that ''E15'' be so placed.

g. Separate Labels for Different Levels of Ethanol

Most commenters stated that there is no need to label E0 or E10. These commenters noted that since the purpose of the rule is to minimize misfueling with E15, EPA labeling should be limited to fuels containing more than 10 vol% ethanol. Several other commenters recommended labels for E0 and every level of gasoline-ethanol blend (including E10) to provide a comprehensive system for identifying the amount of ethanol in the gasoline being sold.

We have concluded that it is not useful or necessary to label E0 or E10. Both fuels are prevalent in the market now, and both may be used by virtually all vehicles, engines and nonroad equipment. Requiring labels for E0 and E10 might help consumers understand the spectrum of gasoline-ethanol blends that are available, but they are not needed to help minimize misfueling. ''E0'' and ''E10'' labels may also cause some confusion. Many pumps dispensing E10 are already labeled under state law, and adding a new label would be duplicative and may lead some consumers to think that E10 is a new type of gasoline. We believe that labeling only E15 pumps will help make clear to consumers that E15 is indeed a new and different blend, and that attention needs to be paid to avoid misfueling with it. Thus, today's rule will not require labels for E0 and E10.

Commenters were divided on whether additional labels were needed for E85, for blends between E15 and E85, and for blender-pumps (pumps that dispense a range of gasoline-ethanol blends). One commenter stated that no additional labels were necessary and that requiring an additional label for these fuels would likely be counterproductive to the consumer education underway in states where mid-level gasoline-ethanol blends and E85 are already available. Some commenters believed that such labels were necessary, with some favoring labels that indicate a range of ethanol levels and other urging that labels specify the precise, or close to the precise, level of ethanol being dispensed (*e.g.,* E20, E30, E40 and so on).

As mentioned above, FTC is considering labels for mid-level gasoline-ethanol blends. FTC already requires labels for E85 and other alternative fuels. There are currently about 2,300 E85 pumps and 215 blender pumps dispensing mid- and high-level gasoline-ethanol blends. These pumps typically have labels or other signage that clearly identifies mid- and high-level gasoline-ethanol blends as such, indicates which nozzle or selector button dispenses those higher blends, and communicates that the blends are for flex-fuel vehicles only. Most alternative fuel labels subject to current FTC regulations must also use the color scheme that we have adopted for the E15 label.

In light of these circumstances, we believe that it is sufficient and appropriate for EPA to require labels only for E15 pumps at this time. There are relatively few pumps dispensing mid- and high-levels of gasoline-ethanol blends, and their current labels and signage are generally designed to attract attention and make clear that the fuel they dispense is for flex-fuel vehicles only. The E15 label we are requiring will provide appropriate information for E15, and should not lead to misfueling with higher gasoline-ethanol blends. In our view, an owner of a MY2000 car, for example, is not likely to read the E15 label, learn that it is inappropriate for his or her motor vehicle, move to an E30 or E85 pump, and buy that fuel instead. Also, as discussed below, the labels that EPA could require in this rulemaking for higher gasoline-ethanol blends could cause consumer confusion. FTC is continuing to consider labeling for mid-level gasoline-ethanol blends, and we anticipate that the two agencies will continue to consult about ethanol labeling. (For example, EPA and FTC staff are working to prevent duplicative labeling.) As we work with our stakeholders to help the public understand the appropriate use of E15, we will share information and insights with FTC for their consideration.[13]

Since the misfueling prohibition established by today's rule applies to gasoline-ethanol blends greater than E10, and not just E15, EPA considered whether to require a label for higher blends in order to provide information about the prohibition. We concluded, however, that such labels would more likely confuse consumers than help them avoid misfueling. The prohibition established in this rule reflects and is based largely on the same information and engineering assessment supporting EPA's decision to deny a waiver for E15 to be introduced into commerce for use in MY2000 and older light-duty vehicles, heavy-duty engines, motorcycles and nonroad products. In this rulemaking, we are not addressing the emissions impact of blends above E15 on MY2001 and newer light-duty vehicles. Therefore, the misfueling prohibition that we are promulgating in this rule applies only to the vehicles, engines and nonroad products not covered by the E15 partial waivers. In this context, any EPA labels for blends greater than E15 would accordingly carry a misfueling prohibition statement that would reference only MY2000 and older light-duty vehicles, heavy-duty engines, motorcycles and nonroad products, and not MY2001 and newer light-duty vehicles. However, such labels might leave the mistaken impression that blends greater than E15 are currently lawful for gasoline-fueled MY2001 and newer light-duty motor vehicles, when they are not. Under CAA section 211(f)(1), those higher blends may be introduced into commerce only

[13] We considered requiring EPA labels for higher gasoline-ethanol blends that combined the information on EPA's label and FTC's proposed labels. However, FTC's proposed labels contain a more general damage statement as well as direction to check the owner's manual. For the reasons discussed above, we do not believe it is appropriate to include the reference to owners' manuals on EPA's E15 label. Also, it is not clear that EPA could require labels for the particular ranges of blends for which FTC proposed labels (*e.g.,* 30–40%, 10–70%). Since we do not have data to show differences in emission consequences for those particular ranges for all types of vehicles, engines or equipment, we do not believe it would be appropriate for EPA to require labels for those particular ranges. In any event, we do not want to presume the conclusion of FTC's consideration of ethanol labeling.

for sale for flex-fuel vehicles. As discussed above, the current labels on pumps dispensing higher gasoline-ethanol blends typically provide that information. Given the scope of this rulemaking, we have concluded that adopting EPA labels in this rulemaking for higher gasoline-ethanol blends could be confusing and counterproductive.

In sum, we expect the E15 label will serve EPA's purpose in providing consumers with the information they need to avoid misfueling with E15, and that it is not appropriate to adopt labeling requirements for blends above E15 in this rulemaking.

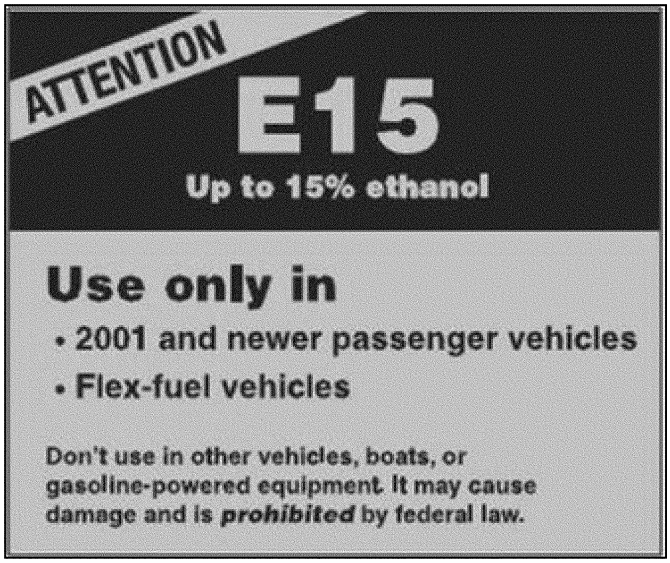
3. Final Fuel Pump Labeling Requirements

Today's final rule requires the wording and general color and design aspects of the label described above. In addition, we are allowing retailers the flexibility to submit alternative labels to EPA for approval. Such alternatives may potentially include the addition of icons and other languages, and small changes in shape and size (except to the extent a larger size is necessary to accommodate more information), but must include the four required components of the E15 label.

We are not requiring labels for other gasoline-ethanol blends. Thus, only the E15 label is required for pumps dispensing that fuel.

Placement of the label will depend on the type of pump that is used. In the case of pumps with one nozzle dispensing several grades of gasoline, the regulations direct the retailer to place the label above the selector button dispensing E15 or otherwise place it so that it is clear which button is dispensing E15. In the case of pumps with a nozzle for each grade, the regulation directs the retailer to place the label where consumers will see it when they are making their fuel selection.

The final E15 label is as follows:



C. PTD Requirements

EPA proposed several additions to existing PTD requirements to provide the information needed for fuel providers to properly blend and label E15 fuel. EPA has previously established similar requirements for PTDs for RFG and blendstocks to help ensure downstream compliance with national RFG standards. As we explained in the proposed rule, the potential introduction of E15 into the marketplace makes it important to include additional information on the PTDs that accompany the transfer of gasoline and gasoline blendstocks used for oxygenate blending, both for RFG and conventional gasoline. We also noted that the type of additional information needed differs for businesses upstream versus downstream of the point of ethanol addition. Most commenters agreed that PTD changes are necessary to minimize misfueling and to help ensure downstream compliance with our fuels regulations as E15 enters the market.

1. PTD Requirements Downstream of the Point of Ethanol Addition

EPA proposed to include on PTDs language indicating the amount of ethanol in the blend and the summertime RVP standards applicable to the blend so that downstream marketers can properly label E15 fuel and avoid commingling fuels that could result in RVP and other violations.[14] EPA proposed that the following statements be included on PTDs for pure gasoline (E0) and the various gasoline-ethanol blends downstream of the point where ethanol blending takes place:

For E0: ''E0: Contains no ethanol. The RVP does not exceed [Fill in appropriate value]''.

For E10: ''E10: Contains between 9 and 10 volume percent ethanol. The RVP does not exceed [Fill in appropriate value]''.

For E15: ''E15: Contains up to 15 volume percent ethanol. The RVP does not exceed [Fill in appropriate value]''.

For EXX: ''EXX—Contains up to XX% ethanol.

''EXX'' refers to fuels blends above E15, up to and including E85 and fuel blends below 9 volume percent ethanol. The maximum potential ethanol content of the fuel would be required to be specified on the PTD in the place of ''XX''.

Most comments were generally supportive of the language as proposed. One commenter recommended that the language on PTDs for gasoline-ethanol blends should be simplified and standardized, and should read: ''Contains at least ## volume percent ethanol and up to ## volume percent ethanol. RVP does not exceed ## psi.'' EPA agrees that standardizing the language for gasoline-ethanol blends is

[14] As was indicated in the proposed regulations, the RVP language would be required for PTDs only for the summertime RVP season.

simpler and easier to understand, and is finalizing changes to the required PTD language for gasoline-ethanol blends to reflect this. For E0, we are finalizing the language to read as proposed (*i.e.,* ''E0: Contains no ethanol''), since the standardized language suggested by commenters contains more information than necessary for gasoline containing no ethanol.

Another commenter argued that the language ''The RVP does not exceed [Fill in appropriate value]'' is unnecessary, as the petroleum industry has a long history of distributing gasoline with the correct RVP to the correct area, and E15 will not change this situation. In contrast, another commenter stated that the proposed requirements to include ethanol content and maximum RVP on the PTD downstream of the point of blending would be beneficial, because it would alleviate the need for additional downstream testing. After considering the public comments, EPA concludes that, downstream of the point where ethanol blending takes place, information on the maximum ethanol concentration and RVP of gasoline and gasoline-ethanol blends is needed to help ensure that shipments of E15 and other fuel are delivered into the appropriate storage tanks at retail and fleet fueling facilities and not improperly commingled. The introduction of E15 into the marketplace will increase the complexity of blending, distributing and selling fuel. The required additions to PTDs will help fuel providers comply with E15 labeling requirements, the summertime RVP requirements for E0, E10 and E15, and the prohibition against misfueling with E15 (including gasoline-ethanol blends greater than 10 vol% ethanol and up to 15 vol% ethanol). Therefore, EPA is finalizing the requirement that information on the maximum ethanol concentration and RVP of gasoline and gasoline-ethanol blends be included on PTDs downstream of the point of ethanol addition.

EPA also requested comment on whether additional language on E10 PTDs is needed to inform parties that a blend containing between 9 and 10 vol% ethanol which benefits from the 1.0 psi RVP waiver under CAA section 211(h) may not be commingled with E0 or a gasoline-ethanol blend that contains less than 9 or more than 10 vol% ethanol. We received comments advocating that EPA require that PTDs for gasoline-ethanol blends higher than 10 vol% ethanol state that those volumes are not eligible for the 1.0 psi RVP waiver. One commenter also suggested that, to avoid downstream commingling of E10 and other fuels not eligible for the 1.0 psi RVP waiver, EPA should incorporate additional language into the E10 PTDs stating: ''This blend is subject to the 1.0 psi RVP waiver. Do not blend with gasoline containing anything other than between 9 and 10 vol % ethanol.'' EPA has decided to include the suggested language to provide clarity and avert potential instances of improper commingling of fuels eligible for the 1.0 psi RVP waiver and those that are not. Thus, we are finalizing a requirement that for gasoline-ethanol blends containing between 9 and 10 vol% ethanol, the PTD must state: ''The 1.0 psi RVP waiver applies to this gasoline. Do not mix with gasoline containing anything other than between 9 and 10 vol% ethanol.''

2. PTD Requirements Up to and Including the Point of Ethanol Addition

EPA proposed that PTDs for gasoline or gasoline blendstock used for oxygenate blending (BOBs) in the manufacture of gasoline-ethanol blends that are subject to summertime RVP controls include the maximum RVP of the BOB to avoid improper blending of E15 or commingling with E15 and other fuels. We also proposed that such PTDs in non-RFG areas indicate what ethanol concentration is suitable to be blended with the BOB to facilitate ethanol blender compliance with applicable EPA summertime RVP requirements.

Specifically, we proposed that the following statements be included on the PTDs for BOBs in non-RFG areas:

''Suitable for blending with ethanol at a concentration up to 15 volume % ethanol'' or, in the case of a BOB designed to take advantage of the 1 psi allowance for E10 in 40 CFR 80.27(d)(2):

''Designed for the special RVP provisions for ethanol blends that contain between 9 and 10 volume % ethanol''.

''The RVP of this blendstock/base gasoline for oxygenate blending does not exceed [Fill in appropriate value]''.

Comments were generally supportive of the proposed language, although EPA received a comment stating that the requirement to include the RVP of a BOB on the PTD is not useful because regulated parties are already prohibited from releasing a finished product onto the market that exceeds the regional and/or seasonal RVP requirements. The commenter argued that the proposed requirement overcomplicates an approach that has worked well in the past and that PTD requirements for BOBs should be flexible and need only contain the type and level of oxygenate with which the BOB should be blended, with additional language included at the discretion of the regulated party. However, while the current approach to compliance with the relevant RVP requirements may work under current conditions, in light of the increasing complexity that will come with the entry of E15 into the market, EPA believes that, upstream of the point where E10 and E15 are manufactured, the maximum RVP is needed on the PTDs for BOBs to facilitate ethanol blender compliance with the applicable EPA summertime RVP requirements.

In order to help ensure that the proposed blendstock commingling restrictions are observed, we requested comment on whether the following language should be added to the PTD for a BOB designed to take advantage of the 1.0 psi allowance for E10: ''The use of this gasoline to manufacture a gasoline-ethanol blend with less than 9 vol% ethanol or E15 may cause an RVP violation.'' Some commenters argued that the proposed changes to the PTD language do not sufficiently address the consequences of blending additional levels of ethanol in gasoline beyond 10 vol% and that language similar to what EPA proposed should be added to the final regulations. One commenter stated that the final rule must ensure that PTDs make it clear that any gasoline-ethanol blends above E10 do not receive the 1.0 psi RVP waiver. The commenter suggested that EPA require the following language on PTDs for fuel for which the waiver does not apply: ''Adding ethanol to this product will result in a blend higher than E10 which will not qualify for the one pound waiver.'' After considering these comments, EPA has decided to require the additional suggested language on PTDs for BOBs designed to take advantage of the 1.0 psi RVP allowance. This PTD language will serve to remind blenders that gasoline-ethanol blends containing more than 10 vol % ethanol do not receive the 1 psi RVP waiver. Furthermore, the PTD language clarifies the proper amount of ethanol with which the associated fuel may be blended. EPA believes that this additional PTD language will help prevent downstream violations of the RVP requirements for E15 and other fuels.

In conclusion, for PTDs for gasoline or BOBs up to and including the point of ethanol addition, we are requiring the following language: ''Suitable for blending with ethanol at a concentration up to 15 vol % ethanol'' or, in the case of a BOB designed to take advantage of the 1.0 psi allowance for E10 in 40 CFR 80.27(d)(2):

''Suitable for the special RVP provisions for ethanol blends that contain between 9 and 10 vol % ethanol.''

''The RVP of this blendstock/gasoline for oxygenate blending does not exceed [Fill in appropriate value] psi.''

''The use of this gasoline to manufacture a gasoline-ethanol blend containing anything other than between 9 and 10 vol % ethanol may cause a summertime RVP violation.''

3. General PTD Requirements

We proposed several general PTD requirements so that the specific information discussed above is useful to the various parties involved in fuel production, distribution and marketing. Specifically, we proposed that on each occasion when any person transfers custody and/or ownership of any gasoline or gasoline BOB, the transferor would be required to provide the transferee with an appropriate PTD identifying the gasoline/blendstock and its characteristics (as defined below), as well as such general information as the names and addresses of the transferor and transferee, the volume of product being transferred, the location of the product on the date of transfer, and other specific information. We proposed that all parties be required to retain PTDs for a period of not less than five years and provide them to EPA upon request.

We also proposed that PTDs be required to be used by all parties in the fuel distribution chain down to the point where the product is sold, dispensed, or otherwise made available to the ultimate consumer. We proposed that PTDs would be required to travel in some manner (paper or electronically) with the volume of blendstock or fuel being transferred. Additionally, we proposed that product codes could be used to convey the information required as long as the codes are clearly understood by each transferee, but that the full proposed text would need to be included on the PTD for transfers to truck carriers, retailers, or wholesale purchaser consumers.

We received comments indicating that space is limited on the physical PTDs, and that EPA should allow for the use of abbreviations and the printing of text on the back of the PTD, provided a clear reference to the back is made on the front. While EPA does require certain language to be included on PTDs, we generally do not specify the form that the PTD must take. We agree that printing on the back of a PTD is appropriate, provided all the required language is included on the PTD and a clear reference to the printing on the back is made on the front of the PTD. Therefore, EPA is allowing parties to print required language on the back of the PTD, provided there is a clear reference on the front. The commenter also suggests the use of ''%'' in place of ''percent'' and ''vol'' in the place of ''volume.'' EPA agrees that the use of these particular abbreviations is reasonable as they are generally understood by industry, and is allowing for the use of ''%'' in place of ''percent'' and ''vol'' in the place of ''volume.''

Finally, we received comments stating that, if product codes can be used on PTDs as proposed by EPA, EPA should also require a product code key on the PTD, as the use of product codes in the current distribution chain has created confusion. EPA believes that the limitations proposed for the use of product codes are sufficient to prevent confusion, as those parties who might be confused by the use of product codes will not receive PTDs that contain them. Specifically, the proposed requirement stipulated that product codes may not be included on PTDs for transfers to truck carriers, retailers, or wholesale purchaser consumers, since these parties are more likely to be unfamiliar with the meaning of product codes. Therefore, EPA is allowing for the use of product codes on the PTD provided the codes are clearly understood by each transferee, and is requiring that the full proposed text be included on the PTD for transfers to truck carriers, retailers, or wholesale purchaser consumers. Although EPA is not requiring a product code key on PTDs, parties are encouraged to include them whenever it would be useful to others in understanding product codes downstream in the distribution chain.

The final rule makes the PTD requirements applicable beginning November 1, 2011, to allow sufficient time for all the relevant parties in the fuel distribution chain to comply. Businesses wishing to begin marketing E15 prior to that date may do so by explaining in the plan required by the E15 partial waiver conditions how the PTD requirements of the partial waivers will be addressed. (As discussed in a later section of this notice, businesses that introduce E15 into commerce do so under the E15 partial waivers and must comply with the partial waiver conditions. Today's rule will facilitate compliance with some conditions, but do not supplant them.) Under the waivers, plans must be submitted to EPA to address the waivers' misfueling mitigation conditions, which include PTD and survey requirements. Prior to the effective date for compliance with the PTD requirements of today's rule, such a plan should describe how PTDs for gasoline, blendstocks or gasoline-ethanol blends would be utilized by the various parties involved in marketing E15 before the compliance date for today's PTD regulations. Such a plan could follow the PTD approach finalized in today's rule to help ensure that appropriate labeling of pumps will occur and that compliant fuel will be dispensed. In this way, a plan for the introduction of E15 may be implemented prior to the compliance date for PTDs as specified in today's rule.

D. Ongoing Implementation Survey

Consistent with the misfueling mitigation conditions of the E15 partial waivers, EPA proposed that the parties involved in making, distributing and selling E15 be responsible for conducting an ongoing survey of the implementation of the labeling, ethanol content and RVP requirements for E15.[15] As we explained, the purpose of the survey program is to help ensure that fuel pump labeling requirements are being met at retail stations or wholesale purchaser-consumer facilities, that the appropriate level of ethanol content is being properly blended and documented in fuel shipments, and that the RVP limitation of the E15 partial waivers is being met. The survey would also deter violations of the ethanol content, labeling and RVP requirements.

EPA proposed to provide responsible parties with the flexibility to conduct surveys that reflected the geographical scope of their plans for E15 distribution and sale. Survey Option 1 would allow an individual or group of gasoline producer(s)/importer(s), ethanol producer(s)/importer(s), and/or oxygenate blender(s) to conduct a local or regional survey if their E15 business plans are limited in geographical scope. Survey Option 2 would allow responsible parties to conduct a nationwide survey, which would likely become the most efficient option as businesses decide to sell E15 in more parts of the country. EPA explained that the flexibility afforded by these two options would be appropriate given the likelihood that E15 will gradually expand into the marketplace. Based on the history of the transition to E10, we expect that sale of E15 will initially begin in a relatively small number of retail stations in a few geographic areas. In that case, it may make sense for responsible parties to comply with survey requirements via Survey Option 1 to limit costs. If E15 expands beyond

[15] *See* 75 FR 68054–68056.

a few areas, Survey Option 2 may become more cost-effective. The parties involved in selling E15 can thus decide which survey option makes the most sense for their circumstances.

1. Proposed Approaches and Consideration of Comments

a. General Survey Comments

In the NPRM, we proposed that ethanol producers/importers, gasoline producers/importers, and oxygenate blenders involved in introducing E15 into the market be responsible for carrying out the proposed survey provisions. Several commenters stated that it would make little sense to include ethanol or gasoline producers/importers as required participants in the survey given their lack of direct control over relevant regulated activities (*e.g.* proper labeling at a retail station or blending too much ethanol into gasoline). These commenters also stated that the proposal would unnecessarily and inappropriately shift EPA's compliance and enforcement obligations onto industry, and that EPA should fund and conduct the survey itself. Some commenters specifically argued that the sole responsibility of complying with survey requirements should be on ethanol blenders and marketers that choose to blend and market E15. Some commenters also stated that unlike the RFG and ULSD survey programs, which allow responsible parties to reduce compliance costs and/or help establish alternative affirmative defenses to fuel standard violations, the E15 survey program provides no benefits to the responsible parties and may add an additional level of complexity that would hinder the introduction of E15 into commerce.

When EPA granted the partial waivers allowing E15 to be introduced into commerce for MY2001 and newer light-duty motor vehicles, it placed a survey requirement on the fuel and fuel additive manufacturers (*i.e.* gasoline manufacturers/importers, ethanol producers/importers, and oxygenate blenders) that introduce E15 into commerce as a waiver condition in order to mitigate misfueling. Since fuel and fuel additive manufacturers are the parties that are subject to the CAA section 211(f)(4) prohibition that was partially waived for E15, they are the parties that, under the partial waivers of the prohibition, bear the obligation to introduce E15 in a manner that avoids misfueling if they choose to make use of the waivers. For a similar reason, to minimize the misfueling that might result from the introduction of E15 into commerce for use by some vehicles but not other vehicles, EPA proposed that these parties be subject to the survey requirements under the misfueling mitigation regulations. This aspect of the proposal also ensures that compliance with the survey requirements of the rule (at 40 CFR 80.1502) would help satisfy the survey conditions of the partial waiver decision.

After considering the public comments, we have concluded that it is appropriate for the parties involved in making and selling E15 to be responsible for conducting surveys that assess implementation of the E15 partial waiver conditions related to misfueling mitigation. The partial waivers allow businesses to introduce E15 into commerce for use in MY2001 and newer motor vehicles. To the extent businesses desire to avail themselves of the opportunity to make and sell E15, they should also bear the cost of monitoring compliance with misfueling mitigation adopted in today's action. EPA has required regulated parties to conduct surveys in the RFG and ULSD programs if they choose to take advantage of regulatory provisions that provide greater compliance flexibility made possible by the surveys. For E15, EPA has granted partial waivers that make it necessary for those who take advantage of the waivers to take certain steps to mitigate misfueling and limit RVP and thereby avoid the emission increases and standard exceedances that would otherwise result. Although the case for surveys in the RFG, ULSD and E15 contexts is not entirely the same, the common, compelling thread is that when regulated parties seek opportunities that may heighten the risk of emission increases, they should be responsible for taking steps to offset or minimize that risk. In all three cases, surveys are an effective means of reducing risk—and at relatively low cost. Moreover, complying with survey requirements will help responsible parties satisfy waiver conditions and introduce E15 into commerce, and will also help establish an affirmative defense to violations found downstream for upstream parties. For these reasons, EPA is finalizing the list of responsible parties as proposed.[16]

EPA also received comments that it should make survey plans and results available to the public. EPA will make plans and results available in the same manner as it has made plans and data from both the RFG and ULSD survey programs available to the public. For example, EPA has provided the Clean Diesel Fuel Alliance (CDFA) with quarterly summary data of the performance of the ULSD survey program for publication on the public CDFA Web site. EPA is committed to providing timely data to the public and will disseminate E15 survey data through avenues similar to those utilized in previous survey programs.

Some commenters suggested that EPA should require that surveys include visual monitoring of pumps in order to observe and record customer behavior to determine the rate of actual misfueling. Other commenters suggested that EPA should conduct its own survey to monitor actual misfueling rates at retail stations. EPA does not believe that it is necessary to require that surveys include visual monitoring at this time. As the transition to E15 occurs, we plan to work with industry, state, environmental and consumer stakeholders to track developments and evaluate the effectiveness of the required misfueling mitigation measures, including the prohibition against misfueling with E15. Also, as noted previously, we are working with ethanol and other stakeholders to help establish a public education and outreach campaign to assist fuel producers, distributors, retailers and consumers in understanding how E15 may be made, distributed, sold and used. That effort can help identify and resolve misfueling issues that may develop as E15 moves into the marketplace.

EPA proposed to include the testing of fuel samples for RVP to ensure that E15 being sold at retail stations was in compliance with the RVP condition of the E15 waiver and that an E10 fuel that used the 1.0 psi RVP waiver under CAA section 211(h) was not commingled with E15, which must have a lower RVP in the summertime. EPA received a

[16] Under the final rule, any oxygenate blender that blends a gasoline that contains greater than 10 vol% and less than or equal to 15 vol% ethanol is responsible for satisfying the survey program requirements along with the gasoline and ethanol producers/importers that manufacture, introduce into commerce, sell or offer for sale E15, or base gasoline, BOB, or ethanol that is intended for use in the manufacture of E15. To help blenders be aware of those gasoline and ethanol producers/importers, today's regulations provide that a gasoline producer/importer intends a base gasoline or a BOB for use in manufacturing E15 if a producer/importer amends its registration to include E15 under 40 CFR 79 or designates that their base gasoline or BOB may be suitable for the addition of up to 15 vol% ethanol in the PTDs accompanying the fuel or blendstock (see discussion of PTD requirements in Section III.B.). In addition, under the regulations, any ethanol producer/importer that sends ethanol into the marketplace is assumed to intend that the ethanol may be used to manufacture E15 unless the ethanol producer/importer demonstrates (*e.g.,* through contracts) that its ethanol is not for use in the manufacture of E15.

number of comments both in favor of and opposed to including RVP testing. Those who were opposed argued that determining RVP levels of E15 and other fuels was unrelated to misfueling, that existing RVP controls have proven effective over time, and that it was up to EPA to enforce RVP requirements with the aid of states without imposing additional costs on industry.

EPA continues to believe that it is necessary and appropriate for the surveys to measure the RVP of fuel samples from pumps labeled as dispensing E15. For E15 to be lawfully sold under the partial waivers, it must have the proper ethanol content, not exceed 9.0 psi RVP in the summertime, and be dispensed from properly labeled pumps. It is thus appropriate for the surveys to measure the RVP of fuel labeled as E15 in order to determine whether E15 is being properly blended and sold under the partial waivers. However, EPA believes that the comments opposing RVP sampling for fuels being dispensed from pumps not labeled for E15 have merit. Since a fuel with an ethanol content above 10 vol% up to 15 vol% that is dispensed from a pump lacking the E15 label is not covered by the partial waivers, its sale violates the misfueling prohibition established in today's rule, regardless of its RVP. Therefore, requiring that surveys sample the RVP of such a fuel is not necessary to determine that its sale is unlawful. We also believe that the current controls on summertime RVP established in 40 CFR 80.27 adequately ensure that E0 and E10 meet the applicable RVP standards. We are therefore limiting the requirement to measure RVP to fuels being sold and labeled as E15.

One commenter asked that the survey be fair and balanced and not place any undue burdens on small petroleum marketers and retailers. EPA is committed to not placing undue burdens on small businesses. Retailers do not have any obligations to conduct a survey; however, they are responsible for complying with E15 labeling requirements if they choose to sell E15, and they are subject to the prohibition against misfueling with E15. EPA believes that by allowing two survey options, it is providing marketers and other small businesses flexibility to determine which survey method is most practical if they choose to sell E15.

b. Survey Option 1

EPA received many comments about Survey Option 1. Some commenters argued that Survey Option 1 would not provide the Agency with accurate information to the degree that a nationwide survey would, because a geographically limited survey would not necessarily detect E15 sent beyond the areas covered by the survey. Some commenters urged that we eliminate Option 1 altogether. These commenters pointed out that the national ULSD and RFG survey programs have been effective and that there was no reason to deviate from such an approach for E15.

The Agency continues to believe that Survey Option 1 is appropriate to provide for parties that choose to manufacture, market, or sell E15. Unlike the ULSD and RFG programs, which regulated the content of fuels that were already distributed and sold, E15 will likely enter the market first in a few areas of country and then gradually expand to other areas over time. Under these circumstances, it is appropriate to provide businesses that decide to sell E15 in a limited area with the option of developing a relatively localized survey. EPA believes that Survey Option 1 can provide the same rigor as a nationwide survey for the areas potentially affected by business decisions to sell E15 in a limited area. Survey Option 1, as finalized today, includes survey requirements (*e.g.* sampling and testing methods) similar to those applicable to the national survey. Also, to be approved, surveys under Survey Option 1 will have to take a robust approach to surveying affected areas considering the fuel distribution network for those areas. EPA provides a similar opportunity to conduct localized or individual surveys under the RFG and ULSD survey programs, and we believe that it is appropriate to provide parties making, marketing and selling E15 the opportunity to choose which approach is most economical and effective in ensuring proper ethanol content and labeling downstream. We are also clarifying the language at § 80.1502(a) to reflect that a survey program conducted under Survey Option 1 must adhere to requirements for robustness similar to those applicable to a national survey.

Other commenters argued that Survey Option 1 is overly broad and not practical. These commenters stated that as written the proposed regulations implied that all gasoline refiners/importers and ethanol producers/importers would have to survey each area their products could enter even though they would have no idea whether their products are being used to blend E15. In response to these comments, it is important to clarify that the obligation to conduct a survey applies only to those parties that decide to make, distribute or sell E15 or their gasoline or ethanol for use in E15. Any party that chooses not to manufacture, market, and/or sell E15 does not need to comply with the rule's survey requirements. Any party that chooses to market ethanol, gasoline, or gasoline blend stock as appropriate for use in E15 is subject to the survey requirement. If a party wants to use Survey Option 1, the party will need to limit where its fuel or fuel additive is sold and distributed. If a party does not want to limit the distribution of its product, then Option 1 would likely not be appropriate for that party. The choice is up to each party considering how the party decides to market their fuel or fuel additive—with or without any limitation on its eventual use downstream. There are many benefits associated with deciding to market a fuel or fuel additive without limitation, but a companion responsibility is to then develop a survey program that is appropriate to the distribution of the product.

One commenter suggested that a survey of five percent of the stations that sold a responsible party's fuel in a prior year be deemed sufficiently representative. This commenter suggested that for the first year of sampling under Option 1, the responsible party should conduct a survey that represents the higher of either: (1) Five percent of the responsible party's estimate of the number of stations that will sell the responsible party's E15 during the first survey year; or (2) five percent of the stations where the responsible party sold fuels containing ethanol the prior year. This commenter pointed out that five percent was approximately the number of stations EPA proposed be surveyed annually under Survey Option 2.

EPA does not agree with this approach to determining the minimum number of stations to be sampled. The Agency chose the number of samples required under Survey Option 2 using an appropriate statistical approach based on the previous performance of the similar ULSD survey program. The number of samples required under that program, and proposed for Survey Option 2, can fluctuate year to year since the number of samples is based in part on noncompliance rates; therefore, more than five percent of retail stations may need to be sampled in a particular survey year. Furthermore, the number of samples for a survey conducted under Survey Option 1 can vary considerably depending on the size and scope of the individual survey plan. Since survey plans should use statistical means to determine the appropriate number of samples needed to comply with the general survey requirements being

adopted, the Agency believes it would be inappropriate to specify a minimum number of samples or percentage of stations to be sampled. The Agency believes that the proposed approach to determining sample size provides appropriate flexibility to responsible parties. Therefore, EPA is finalizing Survey Option 1 as proposed.

c. Survey Option 2

EPA received many comments about most aspects of proposed Survey Option 2, the nationwide ethanol content and E15 labeling survey. Several commenters stated that the proposed requirements that a fuel sample be shipped on the same day it is collected, and that the sample be analyzed for ethanol content within 24 hours, are unnecessary to ensure program integrity, are not practically feasible, and create unnecessary additional costs. We believe that these comments have merit. We chose 24 hours to be consistent with the fuel sample transport and analysis deadlines required in the ULSD and RFG survey programs. However, commenters noted that the independent survey association that has conducted the ULSD and RFG survey programs for the past 15 years has shown that it is not practical to find a shipping carrier that will consistently meet the required 24-hour schedule. One commenter suggested that EPA allow the use of ground shipment service, which takes in general 1–5 days to be received at the lab. This commenter also pointed out that for testing samples, due to the volume of samples that will need to be analyzed, 72 hours would be a best case scenario, with 10–12 business days being more realistic.

EPA believes that it should impose practical, cost-effective requirements regarding the shipping and testing of fuel samples collected as part of the surveys. Therefore, EPA will require that samples be shipped from the retail station to the laboratory for analysis within five days. Additionally, EPA is requiring that samples be analyzed and reported to EPA for both oxygen content and RVP, if applicable, within 10 days of receipt at the laboratory. These changes will reduce the costs of conducting the survey. However, EPA is not changing ULSD and RFG survey requirements at this time since we did not propose to make changes to those survey programs in the NPRM. EPA may adjust the time allotted for shipment and analysis of fuel samples for these programs in an upcoming rulemaking.

EPA also received comments suggesting that surveys begin only after E15 has achieved a certain level of market penetration considering data from the previous year. One commenter specifically suggested that the survey year begin on July 1 instead of January 1 of the year E15 is introduced into commerce. EPA does not believe that it is appropriate for surveys to begin only after E15 has been on the market. The purpose of the survey is to help ensure that E15 is being properly blended and labeled so that misfueling is minimized. That purpose needs to be served from the time E15 first enters the market. Also, we do not believe it is feasible to determine whether an area has exceeded any level of market penetration without accurate survey data upon which to base that determination. Additionally, the misfueling waiver conditions require that a survey plan be approved by EPA and that implementation of the plan begin before E15 may be introduced into commerce. EPA believes that it is best to keep the final survey requirements consistent with the misfueling conditions outlined in its partial waiver decisions.

EPA does not agree that changing the start date of the survey from January 1 to July 1 would be beneficial since, if E15 actually enters the market earlier in the year, the later start date would delay delivery of information needed on a more real-time basis to minimize labeling and other problems that could lead to misfueling. The survey programs for the other fuel programs have been conducted with a January 1 start date and for a normal calendar year, and there is no reason to believe that an E15 survey could not also be conducted on the same schedule. Furthermore, the existing and proposed survey programs break surveys down into four quarterly surveys that ensure that EPA is receiving more real-time information on a regular basis that is not tied to any particular start date. Therefore, EPA is finalizing the survey timing requirements as proposed.

EPA proposed that a nationwide ethanol content and E15 labeling survey conducted under Survey Option 2 have a minimum of 7,500 samples annually and that the next year's survey sample size be determined by the equation found at 40 CFR 80.1502 based on the previous year's non-compliance rates. EPA also sought comment on whether it should allow a smaller number of samples in the first years of the nationwide survey in order to reduce burden. EPA received comments that suggested that EPA should require fewer or more samples than proposed. For example, one commenter suggested that EPA sample 20 percent of the retail stations nationwide. Another commenter suggested a reduction in the number of samples in the first year since E15 will not likely be sold at many retail stations the first year it is introduced into commerce.

The sample size methodology and minimum sample size EPA proposed were based on statistical principles and past survey experience with similar programs. Reducing the sample size even in the first year would compromise the statistical rigor, and therefore the effectiveness, of the program. If, as expected, E15 is initially marketed and sold in a limited geographic area, responsible parties that wish to market and sell E15 could take advantage of Survey Option 1 to reduce the required number of samples. On the other hand, increasing the minimum number of samples does not provide much more information given the large number of samples already required and the substantial increase in costs that a larger number of samples would entail, which would pose an unnecessary burden on responsible parties. However, as part of the survey plan approval process, EPA will consider whether a higher minimum sample size may be methodologically necessary under some circumstances to maintain the rigor of a nationwide survey program. In the regulations issued today, EPA is finalizing the sample size methodology and minimum sample size of 7,500 samples per year as proposed.

One commenter questioned whether proof that a surveyor had been paid must be sent to EPA by the proposed deadline since EPA could bring an enforcement action under the Clean Air Act if the survey was not conducted according to the approved plan. The Agency believes that the requirements that the survey plan be contracted and paid for in advance are important to ensuring that the required surveys will occur.[17] EPA has made this a requirement of both the RFG and ULSD survey programs, and the cost of providing proof of payment to the Agency is minimal.

EPA is making changes to the survey provision governing revoking approval of a survey plan to more closely conform to the method provided for in the ULSD regulations [18] of ensuring that survey plans serve their intended purpose and that this goal is fulfilled until the expiration of the plan.[19] Given the importance of a robust survey for effective implementation of ethanol content, labeling and related

[17] Contracting and paying for a survey also mark commencement of a survey for related regulatory purposes.

[18] See 40 CFR 80.613(e)(10)(v) and 80.613(e)(12).

[19] These provisions apply to surveys approved under options 1 or 2.

requirements, if experience with an approved survey plan proves that it is inadequate in practice, EPA may revoke it. Before deciding whether to revoke a plan, EPA will generally work with the submitter to make changes necessary to remedy the plan's flaws. If satisfactory amendments cannot be achieved, EPA may decide to revoke its approval of the survey plan. In the event a survey plan is revoked, distribution of the E15 authorized for introduction into commerce under the E15 partial waivers based, in part, on the survey plan would have to cease until such time as a replacement survey is approved.

To ensure that the E15 survey provisions create incentives similar to those created by the ULSD program for developing and implementing effective survey plans, the regulations being promulgated today include a provision for voiding a survey plan *ab initio* under appropriate circumstances. If EPA determines that approval of a survey plan was based on false, misleading or incomplete information, or if there is a failure to fulfill or cause to be fulfilled any requirements of the survey, EPA may void *ab initio* the approved survey plan. EPA's years of experience in approving applications that authorize distribution of motor vehicles, nonroad vehicles and engines, and fuels based on compliance with applicable Agency regulations confirm the importance of basing approval determinations on information that is true, clearly stated and comprehensive, and on ensuring implementation of the terms of the application. Given the importance of E15 surveys to effective implementation of E15 misfueling mitigation measures, providing that survey plans may be voided *ab initio* under appropriate circumstances will help ensure that plans are properly developed, supported and implemented. E15 distributed based on a plan whose approval was secured with false, misleading or incomplete information, or a plan whose requirements are not fulfilled, was not distributed in compliance with the conditions of the waiver.

In considering whether it is appropriate to void a survey plan *ab initio,* EPA will review the information that was submitted in support of the plan. EPA will regard information that is not true to be false information; information that, while true, may lead a reasonable person to an incorrect conclusion to be misleading information; [20] and information that is missing elements necessary for a full understanding of the information that was presented to be incomplete information. Survey plans with these kinds of information flaws are inherently unreliable, and effectively prevent EPA from conducting a meaningful review of the survey plan and from basing its decision to approve the plan on complete and accurate information. Thus, when EPA discovers that its approval of a survey plan was based on false, misleading or incomplete information, EPA may decide to treat its approval as never having been granted. In addition, as discussed above, EPA is requiring proof of a valid contract for conducting the survey and payment for the survey to be provided to EPA to help ensure that the survey is implemented. If, despite the fact that EPA receives this proof, the requirements of a survey plan are not fulfilled, EPA may treat the survey plan as never having been granted by voiding it *ab initio.* Distribution of E15 under any survey plan that is voided *ab initio* would have to cease until such time as a replacement survey is approved, and E15 that was distributed based on that plan will be deemed to have been distributed in violation of 40 CFR 80.1504(a)(2).

2. Final Survey Requirements

In today's rule, EPA is finalizing both survey options. After carefully considering all of the comments received pertaining to the survey requirements, EPA is finalizing Survey Option 1 as proposed. In additional, EPA is finalizing most elements of Survey Option 2 as proposed. However, Survey Option 2 as finalized does not require RVP testing of fuel samples from pumps not labeled for E15, and provides more time for the shipping and testing of samples. Finally, EPA is revising provisions to permit both revoking and voiding *ab initio* approval of survey plans in appropriate circumstances.

E. Program Outreach

In the NPRM we pointed out that a public education and outreach program for E15 will be important to help mitigate misfueling that could result in increased emissions and vehicle or engine damage. We also noted that the industry-lead outreach campaign for the ULSD program helped successfully transition the nation to ULSD while mitigating most misfueling.

Almost all commenters agreed that an effective outreach program would be essential to mitigate E15 misfueling, and some cited the ULSD outreach effort as an example of how EPA and affected stakeholders could work together to aid in the transition to E15 and minimize misfueling. Recommendations included a dedicated Web site, use of EPA's online Green Vehicle Guide, use of other media, pamphlets at retail outlets, and consumer interaction via keypad entry at the pump. There were also comments that EPA should establish and lead the outreach program.

EPA agrees that public outreach and consumer education are key to effectively mitigating misfueling. However, we believe that industry needs to take the lead in such efforts. Our recent experience with the transition to ULSD shows that a stakeholder-led outreach campaign can work synergistically with labeling requirements and provide another means of providing important information to everyone involved in fuel production, distribution and use. The ULSD outreach program also shows that industry is better situated to coordinate with the parties involved in the production, transport, and marketing of E15. More importantly, businesses interact with consumers (via advertising, a Web site, pamphlets, *etc.*) about the fuels they sell, and those that decide to sell E15 will need to make decisions about how to promote E15 in a manner that also minimizes misfueling. As noted previously, the introduction of E15 into the market is likely to start in a limited number of areas and grow over time. In these circumstances it is even more appropriate that the parties who choose to market this product take the lead in outreach and consumer education in the areas the product is introduced.

In light of these considerations, EPA believes that primary responsibility for public outreach and education about E15 appropriately rests with the businesses that decide to make and sell E15. As we did for the ULSD program, we intend to actively assist in the development and implementation of an outreach and education campaign for E15 when it enters the market. We are already in the process of working with ethanol and other stakeholders to help establish such a campaign. As that process moves forward, we will help ensure that a broad range of stakeholders are kept informed so they may become involved as they see fit.

F. Other Misfueling Mitigation Measures

In the proposed rule, we explained our expectation that the misfueling

[20] For example, a plan implemented by a survey association that is misleadingly described in the plan as independent of and free from obligation to ethanol blenders and producers, gasoline refiners and ethanol and gasoline importers or their employees, but which is in fact not independent of or free from such obligation, yields survey results that are inherently unreliable. Such a plan may be voided *ab initio.*

mitigation provisions we were proposing would adequately address misfueling mitigation concerns. We based our expectation on the relatively recent transition to ULSD when similar measures were employed to help minimize misfueling of new vehicles and engines that were designed and built to achieve stringent emission standards when operated on ULSD. However, we also recognized that there could be other means for addressing misfueling, as suggested by API in its misfueling mitigation measures scoping study.[21] In the NPRM, we discussed several suggestions covered in API's study and sought comment on those and any other measures that industry or other stakeholders considered necessary or helpful to mitigate misfueling with E15.

We received many comments recommending that EPA implement or study one or more mitigation measures in addition to those we proposed. This section contains a brief summary of major comments and our responses to those comments. It begins with a discussion of the general issue of whether the proposed misfueling mitigation measures are sufficient to mitigate misfueling, and then considers several specific measures suggested by commenters for inclusion in today's final rule. Responses to comments not addressed in this section can be found in the ''E15 Misfueling Mitigation Measures Response to Public Comments.''

1. Need for More Mitigation Measures

Many commenters expressed strong concern that the proposed suite of misfueling mitigation measures would not be sufficient to minimize potential misfueling with E15. They took issue with EPA's comparison of the potential for misfueling with E15 to the potential for misfueling under EPA's ULSD program, and contended that the more instructive comparison is to the transition to unleaded fuel, where EPA required additional mitigation measures.

The commenters generally argued that the transition to ULSD did not provide the best or most appropriate point of reference for designing a misfueling mitigation program for several reasons. First, EPA regulations required that ULSD replace low sulfur diesel (LSD) fuel over several years, whereas, according to the commenters, E0, E10, and E15 will coexist in the marketplace for an indefinite period, increasing the likelihood of misfueling. Second, the commenters noted that the potential harm from LSD was to newer engines equipped with advanced emissions control devices, while the potential harm from E15 is to older vehicles and engines. For ULSD, they noted there was opportunity for vehicle manufacturers to educate new diesel vehicle consumers at the time of purchase about the risks of misfueling, with this information reinforced in the owner's manual and on the vehicles themselves. For E15, the commenters explained, there is no similar opportunity for consumer education. While the commenters acknowledged that vehicle turnover will decrease the number of MY2000 and older light-duty motor vehicles in the U.S. vehicle fleet, they stated that the rate of vehicle turnover is decreasing as vehicle quality and durability have improved and will take decades to complete. Representatives of boat manufacturers and owners also noted that many larger boats have longer useful lives than passenger vehicles. A third reason for concern, according to commenters, is that E15 may be priced less than E10 or E0, adding a cost incentive for misfueling.

Many of these commenters contended that the transition to unleaded gasoline was at least as relevant to the design of E15 misfueling mitigation measures as the transition to USLD. (Similar to the transition to ULSD, the transition to unleaded gasoline occurred as a result of new emission standards that required new emission control equipment that would be irreversibly damaged by lead in gasoline.) The commenters noted that the measures established to reduce misfueling of new motor vehicles with leaded gasoline included physical constraints—specifically, vehicle fuel inlets and gasoline nozzles designed so that new vehicles requiring unleaded gasoline could only accept nozzles dispensing unleaded gasoline. The commenters pointed out that even these constraints did not prevent all misfueling, particularly when leaded gasoline was priced less than unleaded gasoline.

After carefully considering these comments, EPA continues to believe that the comparison to the ULSD program is valid and provides an appropriate basis for designing the E15 misfueling mitigation program. LSD and ULSD were available in the market at the same time for several years, just as E15 is expected to be available along with E10 and/or E0 for a number of years. In the case of both USLD and E15, the potential for engine damage and associated repair costs exists if misfueling occurs. EPA believes that consumers have a strong interest in avoiding repair and replacement costs, whether their vehicles or gasoline-powered equipment are new or old. Owners may expect to get less use from their older vehicles and equipment, but that does not mean that they will put their possessions at risk, absent a strong price incentive (discussed below). An essential element of a misfueling mitigation program is alerting consumers to that risk. For ULSD, pump labeling was important for notifying consumers of newer vehicles and engines of the need to use ULSD and the consequences of misfueling. The E15 label will serve the same purpose for owners of older motor vehicles and other products for which E15 is not allowed. For ULSD, industry established the Clean Diesel Fuel Alliance to educate diesel product consumers about the importance of avoiding misfueling with LSD. EPA is working with E15 stakeholders to help establish a similar public education effort for E15. Overall, the transition to USLD posed misfueling issues similar to those that will be raised by E15's entry into the market, making the misfueling mitigation measures employed in the ULSD program appropriate models for mitigating misfueling with E15.

Commenters did not provide sufficient evidence or rationale to persuade us that use of physical constraints to prevent misfueling with leaded gasoline means that similar, physical measures are necessary for E15. A key difference between E15 and leaded gasoline is that misfueling with E15 could result in driveability and operability issues with older motor vehicles and nonroad equipment, while unleaded gasoline did not affect the driveability of vehicles designed to run on leaded gasoline. The E15 label will inform consumers that misfueling with E15 may cause damage, and a public education effort can reinforce that message. Also, consumers today have more and easier access to more information about how to maintain their vehicles for best performance and durability.

Another factor that contributed to misfueling with leaded gasoline was the perception that the higher octane of leaded gasoline, typically 89 anti-knock index (AKI) versus 87 AKI for most unleaded gasoline, made leaded gasoline a better fuel. An even stronger factor was price. Leaded gasoline was typically five or more cents per gallon cheaper than unleaded gasoline, at a time when gasoline was less than a dollar per gallon. With the perception of

[21] ''Evaluation of Measures to Mitigate Misfueling of Mid- to High-Ethanol Blend Fuels at Fuel Dispensing Facilities,'' American Petroleum Institute, EPA Docket # EPA–HQ–OAR–2010–0448.

no harm from misfueling and the loss of higher octane, some consumers saw no reason to spend the extra money on unleaded gasoline. Such is not the case for E15. Depending on the availability of ethanol, which can vary by season, E15 could be priced somewhat more or less than E0/E10 with a comparable octane. Considering the extent that recent gasoline prices have fluctuated, it does not seem likely that consumers would risk damaging their vehicles or equipment for small incremental savings. Public outreach can also help remind consumers of the cost consequences of misfueling.

At the same time, we agree that if E15 is priced less than E10 or E0, the risk of misfueling may increase if consumers believe that they can save more money by purchasing E15 and do not consider or believe the savings are more than they would pay to repair or replace their vehicles or equipment sooner than might otherwise occur. However, it is too early to know how E15 will be marketed, including how it will be priced. EPA will work with stakeholders to monitor the transition to E15 and the effectiveness of the mitigation measures being required by today's rule. In the meantime, it is worth noting that the prohibition against misfueling with E15 is applicable to both fuel providers and users. As discussed later in this notice, retailers can avoid liability for consumer misfueling if they properly label E15 pumps and can show that they did not encourage or otherwise cause misfueling. In general, fuel providers are encouraged to consider whether their particular circumstances would make it useful to take additional, tailored steps to avoid consumer misfueling.

In sum, as with the ULSD program, we believe that the misfueling measures being finalized today for E15 will work together so that fuel providers have a strong incentive to properly blend and label E15 and consumers have a strong incentive to avoid misfueling. An industry-led public outreach campaign can reinforce how and why it is important to avoid misfueling.

In evaluating the need for additional mitigation measures, we also considered the fact that there is currently significant uncertainty about where, when and how E15 will enter the market. While the partial waiver decisions removed one legal barrier to introducing E15 into commerce, other steps must be taken to address additional Federal, State and local requirements, including registering the fuel as required by the Clean Air Act and determining the compatibility of fuel storage and dispensing equipment under various Federal, State and local regulations. Ultimately, businesses must decide whether and how to introduce E15 into the market. We expect that the transition to E15, like the transition to E10, will take time and begin in some parts of the country before becoming broadly available. In the process, business decisions will be made about how to market E15 (*e.g.,* price of E15, its use for a particular grade of gasoline, types of pumps used to dispense it) that will bear on what, if any, additional measures may be useful to mitigate misfueling, including the specific suggestions assessed below. In light of these various considerations, we have concluded that it is neither necessary nor appropriate to require additional misfueling mitigation measures as part of today's final rule.

As the transition to E15 occurs, we plan to work with industry, state, environmental and consumer stakeholders to track developments and evaluate the effectiveness of the required misfueling mitigation measures. As noted previously, we are working with ethanol and other stakeholders to help establish a public education and outreach campaign to assist fuel producers, distributors, retailers and consumers in understanding how E15 may be made, distributed, sold and used. That effort can also help identify and resolve misfueling issues that may develop as E15 moves into the marketplace. In the meantime, if fuel providers believe additional measures will further reduce the risk of misfueling under their particular circumstances, they may take such actions. For example, retailers that serve a significant population of boat or small equipment owners may decide it is appropriate under their specific circumstances to post signs that specifically address misfueling of those products. By taking additional tailored steps, retailers and other fuel providers can provide examples of other measures that may prove effective in further reducing the risk of misfueling.

2. Specific Suggestions for Additional Mitigation Measures

We examined the feasibility and utility of several specific misfueling mitigation measures suggested by public commenters for adoption in the final rule. As described below, each of the suggestions presents implementation, feasibility or cost issues. There is also little empirical data about the relative effectiveness of these measures. Given the uncertainties about the transition to E15 and the need for and effectiveness of the suggested measures, we have concluded that it is not appropriate to require them at this time, although fuel providers are encouraged to develop and deploy these and other measures as they deem appropriate for their circumstances.

a. Distinctive Hand Warmers for E15 Dispensers

As discussed in the NPRM, the American Petroleum Institute (API) study considered the use of different colored ''hand warmers'' or ''nozzle grips'' (the flexible plastic sheath that covers the part of the pump nozzle that is gripped when dispensing gasoline) to distinguish E15 fuel dispensers from other fuel dispensers. A number of commenters recommended the adoption of such hand warmers, suggesting that EPA require E15 hand warmers to be a uniform and unique color and/or texture nationwide to indicate to consumers that E15 is different than other gasoline and not appropriate for all motor vehicles. Some commenters also suggested complementary signs to highlight the distinctive hand warmer.

We carefully considered the workability and utility of this measure. Hand warmers are low cost and are replaced periodically, so this option could be relatively inexpensive and easy to implement. However, this option could be challenging to implement for a number of other reasons. First, there is no industry standard color scheme for hand warmers. An assigned color for E15 hand warmers could conflict with, or be confusing in the context of, retail stations' existing color schemes. To address this issue, we considered whether to require E15 hand warmers with a noticeably different texture or bearing the text ''E15.'' However, there is currently no available data for determining whether or to what degree such differences would be effective in drawing consumers' attention more than the required label itself.

We also identified another implementation challenge concerning pumps that use a single nozzle to dispense multiple grades of gasoline. Many existing pumps use a single nozzle to dispense multiple grades of gasoline, such as regular grade (*e.g.,* 87 octane), premium grade (*e.g.,* 92 octane), and a mid-grade (*e.g.,* 89 octane). Consumers push a button to select the grade of gasoline desired and then use the single nozzle to dispense the fuel selected. It is likely that E15 may be marketed as one, but not all, grades of gasoline, especially in the near term. Requiring an E15 hand warmer on the nozzle of these pumps could be misleading or confusing to consumers if the dispenser supplies not only E15 but also E10 or E0.

In light of these issues and the lack of information about the effectiveness of uniquely colored or textured hand warmers, we have concluded that it is not appropriate to require this measure in today's final rule. At the same time, we think distinctive hand warmers might prove useful in many circumstances, and we encourage retailers to consider whether their use might provide customers with a useful visual or textual cue given their stations' pump types, color schemes or other relevant attributes.

b. Keypad/Touch Screen Information/ Confirmation

Some commenters stated that EPA should require all fuel pumps dispensing E15 to require affirmative confirmation from consumers that they wish to purchase E15. The commenters suggested this could be accomplished through a mandatory electronic keypad approval (tied to fuel grade selection), in which the consumer would need to confirm the use of E15 prior to purchase. Some commenters argued that the sale of E15 should be prohibited from pumps that do not have an electronic keypad. Commenters favoring this measure did not provide specific information about how affirmative confirmation using electronic keypads or touch screens could be implemented.

EPA agrees that requiring affirmative confirmation from consumers before they fuel with E15 could help consumers avoid misfueling with E15. However, based on the limited information provided by commenters, it does not appear that this measure could be implemented using available technology or software. The electronic keypad used for credit/debit card transactions do not generally interface with the fuel selector such that the pump can be locked if the consumer makes an inappropriate selection. Providing an interactive process for selecting E15 would likely require substantial upgrades to the point-of-sale system of the dispensers. We have therefore decided that available information does not support requiring this measure at this time. However, retailers may develop and implement keypad-based methods for providing consumers with further information or opportunities to make appropriate fuel choices.

c. Radio Frequency Identification (RFID)

Some commenters suggested the use of RFID technology as another misfueling mitigation measure. RFID technology is already used in fuel dispenser activation and purchasing systems. For example, one oil company uses RFID technology in a tag or card that provides a ''contactless'' payment system that provides members with a quick way to pay for purchases at participating stations. The tag has a built-in chip and radio frequency antenna that allows it to communicate with readers at gasoline dispensers.

For this option to be useful in mitigating misfueling with E15, MY2001 and newer motor vehicles would need to be retrofitted with an RFID device that allows E15 to be dispensed into the motor vehicle. Some commenters indicated that the device installation is relatively simple (for example, a consumer could have a device installed during an oil change). One commenter estimated the cost of an RFID ring tag to be $50–75 and installation of the tag around the fuel inlet to be $12.50. Retrofitting of fuel dispensers with a companion RFID device would raise larger cost and implementation issues. One commenter indicated a cost of $500 for installing an RFID reader per fuel dispenser nozzle and $10,000 to $20,000 to install a central controller per facility per dispenser to upgrade software for security purposes.

Based on the information provided, this measure, while potentially effective, raises a number of significant issues. First, it would require the owners of MY2001 and newer light-duty motor vehicles, which can lawfully use E15, to spend time and money to install devices so that owners of vehicles and equipment that cannot lawfully use E15 cannot dispense E15 into those vehicles or equipment. Second, it is not clear whether or how consumers could be persuaded or required to install the RFID technology. Third, the cost to retail stations would likely be considerable. Particularly given the uncertainties about the transition to E15, it seems highly unlikely the benefits of this measure would outweigh its costs. In light of these issues, we determined that adoption of this measure would be inappropriate.

d. Requiring the Continued Availability of E10 and/or E0

Several commenters urged EPA to require the continued availability of E10 and/or E0, arguing that EPA should adopt regulatory requirements now to ensure that owners of older motor vehicles and other gasoline-powered engines, vehicles, and nonroad equipment not covered by the E15 partial waiver decisions can find the fuel they need. In addition, on March 23, 2011, EPA received a petition for rulemaking requesting that EPA promulgate a rule under Clean Air Act section 211(c) to ensure the continued availability of gasoline containing 10 vol% or less ethanol (''≤E10'') at retail stations for use in vehicles, engines, and nonroad equipment not covered by the E15 partial waivers.[22] [23] Both the commenters and the petitioners noted that E10 has, over time, largely displaced E0 in the marketplace, and in some areas of the country, it is already difficult to locate E0. They expressed concern that E15 could similarly displace E10, particularly if economic factors and the Renewable Fuel Standard result in broad adoption of E15. They argued that unless E10 remains available, owners of vehicles and gasoline-powered engines, vehicles, and nonroad equipment for which E15 is not allowed may have no choice but to misfuel with E15. Petitioners also contend that EPA's proposed misfueling mitigation measures will not be effective unless EPA ensures that ≤E10 remains available alongside E15. Petitioners point out that EPA required availability of unleaded gasoline and USLD to protect emission control systems, and they ask EPA to similarly require the availability of E10 to protect the performance of emission control systems of vehicles, engines, and nonroad equipment not covered by the E15 partial waiver decisions.

For the reasons discussed below, the Agency is not requiring the availability of E10 (or E0) in this rulemaking and is also denying the rulemaking petition. Based on the information currently available to the Agency, we find that it is neither necessary nor appropriate to issue such regulations at this time or to initiate a rulemaking process to adopt them. While EPA appreciates that the availability of appropriate fuels is important to mitigating misfueling, it is premature for EPA to try to forecast now how E15 will be distributed and marketed over the next several years, and how this might impact the availability of ≤E10. In considering the future availability of ≤E10, it is important to remember that EPA's partial waiver decisions allow, but do not require, E15 to be sold. Instead, the partial waivers remove a statutory prohibition on introducing E15 into commerce, subject to misfueling

[22] ''Petition for Rulemaking Under the Clean Air Act to Require the Continued Availability of Gasoline Blends of Less Than or Equal to 10% Ethanol,'' Alexander David Menotti, Kelley Drye & Warren LLP on behalf of American Motorcyclist Association (AMA), et al., EPA Docket # EPA–HQ–OAR–2010–0448.

[23] On May 27, 2011, EPA received comments opposing the petition from the National Association of Convenience Stores and the Society of Independent Gasoline Marketers of America. These comments are summarized in the Response to Comments document located in the public docket.

mitigation and other conditions. It is now up to businesses to decide whether and how to produce and sell E15 for MY2001 and newer light-duty motor vehicles. Further, before E15 can be legally sold and made broadly available for these vehicles, a number of additional steps must be taken by fuel producers, distributers, and marketers as well as Federal, state and local government agencies. These steps include registering E15 as a motor vehicle fuel under the Clean Air Act, addressing the compatibility of E15 with fuel storage and dispensing equipment, and potential changes to state and/or local requirements. In light of these additional steps, EPA expects that any significant market shift to E15 will take several years or more, and that the decisions fuel providers will make about the continued availability of ≤E10 will largely determine if any availability requirement is needed. Since ≤E10 is widely available now, the appropriate response to any future ≤E10 availability issues will best be determined by evaluating the distribution and market circumstances of E15 and ≤E10 fuels as E15 enters the market. EPA will work with stakeholders to monitor those circumstances and timely address any ≤E10 availability issues that are based on those specific circumstances.

Commenters and petitioners did not provide data that suggest that ≤E10 will be unavailable in either the short- or long-term, nor did they provide quantitative analysis or evidence to support claims that E15 will be less expensive than E10. This is significant since, as explained above, it is not EPA that determines whether, how, or where E15 will be distributed and sold, or how this will impact availability of ≤E10. It is the fuel industries involved that will determine the role that E15 plays in the fuel distribution system and how this will affect availability of ≤E10. Without commenters and petitioners providing data to support their assertions, EPA can only consider available information, which shows that it is far from a foregone conclusion that E15 will result in a scarcity of ≤E10 in the next several years or more. Under the E15 partial waivers and the misfueling prohibition in today's rule, E15 may be used only in MY 2001 and newer light-duty motor vehicles and FFVs. Gasoline containing no more than 10 vol% ethanol will continue to be needed for fueling MY2000 and older light-duty motor vehicles and all heavy-duty gasoline vehicles and engines, motorcycles and nonroad equipment. EPA estimates there are over 240 million such vehicles, engines, and nonroad equipment in existence today, and even as some products are retired, new heavy-duty gasoline-powered vehicles and engines, motorcycles, and nonroad equipment will be purchased. In view of the continuing demand for ≤E10, EPA expects that many retailers will continue to make ≤E10 available. Also, as noted above, retail stations that decide to sell E15 will need to address the compatibility of fuel dispensers and underground storage tank systems with E15, which could affect the pace of E15's entry into the marketplace. According to some commenters, gasoline producers may need to change fuel formulations to accommodate the use of E15, which could further impact the availability and cost of E15 relative to ≤E10. In short, many factors affect the timing and extent of the availability of E15 and any impact on the continued availability of ≤E10. At this time, EPA cannot forecast how decisions will be made by the various industries involved and is not in a position to evaluate either the detailed scope of any future issues concerning availability of ≤E10 or the appropriate regulatory response.

Commenters and petitioners stated that EPA has the legal authority under Clean Air Act section 211(c) to require the availability of ≤E10. Under section 211(c), EPA may control or prohibit fuels and fuel additives that cause or contribute to air pollution that may endanger public health or welfare or significantly impair emission control devices or systems. Those controls may include, where justified, requiring the availability of particular fuels needed to ensure the continued effectiveness of emissions control systems. However, to require ≤E10 availability, EPA would need to conduct a number of analyses, including of the costs, small business impacts, and environmental and other benefits of such a requirement. CAA section 211(c), the Regulatory Flexibility Act, and various Executive Orders pertaining to rulemaking call for analysis of various factors before proposing and adopting regulations such as a fuel availability requirement under section 211(c). Petitioners requested that EPA require that ≤E10 be made available at any retail gasoline station that offers gasoline containing greater than 10 vol% ethanol. However, petitioners provided no quantitative or qualitative data necessary to analyze the important issues that are relevant for establishing this kind of requirement. For example, petitioners did not show that the requirement is necessary to avoid misfueling based on an analysis of a reasonable projection of the future volumes and marketing patterns of E15 and ≤E10 fuels in the future. Petitioners also provided no information on how the costs of such a requirement would compare to the benefits, under the same volume and marketing projections. Without such information, the Agency cannot justify placing potentially costly requirements on small businesses (*e.g.,* the thousands of independently owned and operated gasoline retail stations) or require that the fuel distribution system maintains storage capacity for ≤E10 (*e.g.,* potentially requiring that terminals provide additional tanks to store more blendstocks). Indeed, given the many uncertainties that exist concerning the future availability of E15, E10 and E0, it would be difficult, if not impossible, to conduct the required analyses in a meaningful way at this time.

EPA raises these points not to discount the important issues raised by the petitioners and commenters, but to indicate the kind of analysis that would be needed to evaluate either the suggested regulatory approach or other less comprehensive regulatory requirements, and to highlight the premature nature of taking regulatory action at this time.[24] Until E15 enters the market and further developments take place, much of the information needed to conduct those analyses will be unavailable or difficult to obtain. Better, well-informed decisions can be made by monitoring developments concerning the availability of E15 and ≤E10 and formulating any EPA response in light of specific developments as they occur over time.[25]

Contrary to petitioners' assertions, the circumstances that led EPA to ensure the availability of unleaded and USLD fuels are substantially different from those of any transition from E10 to E15. In the case of both the lead phase-down and the ULSD programs, a new fuel was needed to protect the advanced emission controls of new vehicles and engines. The predominant fuels on the market at the time (*i.e.,* leaded gasoline and 500 ppm sulfur diesel fuel) would have damaged those controls, so it was important for EPA to ensure the availability of new fuels that would allow the advanced emission controls to

[24] In addition, EPA notes that there would be serious notice and comment concerns if EPA attempted to adopt any regulatory requirement on availability in this final rule.

[25] Given EPA's many statutory responsibilities, we also conclude that it does not make sense to use EPA's limited resources to attempt to develop information or make projections now where much more reliable information will become available over time, nor is it appropriate to undertake a rulemaking now that imposes specific requirements that could well be unnecessary in light of future developments.

work properly.[26] Here, commenters and petitioners are asking for regulatory assurance that the currently predominant fuel on the market remains available. Because we expect, for the reasons discussed above, that E10 will remain the predominant fuel for some time, and is likely to remain available for a long period of time in response to market demand for the fuel, we do not believe it is appropriate to require the availability of ≤E10 at this time.

The petitioners also incorrectly assert that the E15 misfueling measures finalized in today's action will supersede the waiver conditions. In fact, as discussed in section IV.G, today's requirements are not a substitute for the waiver conditions, although they should help responsible parties satisfy some of the conditions. Fuel and fuel additive manufacturers must still satisfy all waiver conditions before E15 may be introduced into commerce. This includes submitting plans that detail how a fuel or fuel additive manufacturer will ensure that misfueling does not occur. To the extent E10 becomes scarce and would not be reasonably available to consumers, plans submitted under the waiver may be an avenue for addressing the issue. In the future EPA would evaluate that approach as well as any potential regulatory approach under section 211(c).

As discussed above (see section III.F.1), EPA believes that the misfueling mitigation measures included in today's action will appropriately and effectively reduce the potential for misfueling. Those measures include a misfueling prohibition and an E15 label that communicates that prohibition, along with the potential for damage to vehicles and engines not covered by the partial waivers, to consumers. With those measures in place, retailers, distributors, and consumers are expected to obey the law and find fuel that is compatible with their vehicles, engines, and equipment.

For the reasons discussed above, EPA is denying the petition for rulemaking to require that gasoline-ethanol blends containing 10 vol% or less ethanol be made available in the marketplace. As the transition to E15 occurs, we will work with fuel producers, distributors, and marketers to monitor the availability of E15, E10, and E0 so that any potential problems can be anticipated and addressed on a timely basis, based on real world conditions as they develop.

G. Modification of the Complex Model Regulations and VOC Adjustment Rule

To measure compliance with the RFG and anti-dumping standards, the emissions performance of gasoline is calculated using a model, called the Complex Model, which predicts the emissions level of each regulated pollutant based on the measured values of certain gasoline properties. Currently, the amount of oxygen that can be used as input to the Complex Model is limited to no more than 4.0 percent by weight (wt%) in gasoline in which the oxygenate is ethanol. This level is equivalent to the maximum amount of oxygen in gasoline containing 10 percent by volume (vol%) ethanol, or E10.[27]

The emissions level as computed by the Complex Model is compared to the baseline emissions for each pollutant, and the percent reduction is then calculated. The RFG standards for VOC, NOx, and toxics are stated in terms of percent reductions from the baseline, whereas the antidumping regulations applicable to conventional gasoline generally require no greater emissions than baseline levels. Under the Clean Air Act, baseline emissions must be based on 1990 vehicle technology, not current fleets, nor off-road equipment. For gasoline to be sold in the U.S., it must comply with either the RFG or antidumping standards, as appropriate. Refiners are required to certify that their fuel meets the standards by using the Complex Model. For the RFG areas of Chicago and Milwaukee, RFG that contains 10 vol% ethanol is given an adjustment of the VOC performance standard, resulting in a slightly less stringent requirement.

1. Proposed Approach and Consideration of Comments

Because the Act specifies that the emissions performance for RFG is to be measured against a baseline that represents 1990 vehicle technology, we were not able to use current emissions test data on motor vehicles using E15 gasoline as a basis for evaluating appropriate changes to the oxygen input parameter of the Complex Model VOC equation. Instead, we relied on a study conducted in 1994 by Guerrieri *et al.* (Guerrieri/Caffrey study) that examined the exhaust emissions from 1990 vehicles using gasoline with ethanol levels varying from 0 to 40 vol%.[28] Based on the study findings, we are reasonably confident that the average VOC emissions for ethanol blends greater than E10 up to and including E15 will be no worse than for E10, for 1990 technology motor vehicles.

This outcome is consistent with our engineering judgment. The study's data showed that on average exhaust hydrocarbon emissions increased from E10 to E12, but then decreased beyond E12. While the study does not provide sufficient data to determine the precise VOC emission effect between E10 and E15, the linear regression results presented in the study indicate a decreasing trend in hydrocarbon emissions with increased ethanol in gasoline. In the NPRM, we therefore proposed to modify the regulations to allow gasoline fuels containing greater than 4.0 wt% oxygen and up to 5.8 wt% oxygen to be certified with the VOC emissions effects modeled the same as if the fuel contained 4.0 wt% oxygen.[29]

Most comments received supported the proposed change to the Complex Model regulations. Some commenters were concerned permeation effects, the representation of NO_X and toxic emissions by the Complex Model, and whether the Complex Model should be modified to allow increased oxygen levels from all renewable fuels. Two comments also suggested that the VOC adjustment that applies in Chicago and Milwaukee for RFG containing nine to ten percent ethanol should be modified to allow RFG that contains up to 15% ethanol to have the same VOC standard as E10. We discuss these comments in further detail below.

a. VOC Emissions From Permeation

One commenter pointed out that with respect to the effect of increased ethanol levels on VOC emissions, the Guerrieri/Caffrey study examined only exhaust VOC emissions. Evaporative VOC emissions were not investigated. The commenter pointed out that permeation emissions are a concern with ethanol, and that the Complex Model should

[26] For lead phase-down, EPA required the availability of unleaded gasoline to replace leaded gasoline because use of unleaded gasoline was necessary to the proper operation of the catalytic converters equipped on new motor vehicles. With the ULSD program, refiners were required to produce ULSD because it was needed for proper operation of the advanced emission control technologies with which MY2007 and newer diesel engines would be equipped. There was no availability requirement for ULSD, but the rule was designed in such a way to ensure an adequate supply and distribution of ULSD for the new heavy-duty vehicles that would need it.

[27] Because the percent by weight of oxygen in the fuel varies depending on the density of the fuel, the limit in the Complex Model is currently 4.0 wt% to reflect the maximum amount of oxygen associated with E10. In most fuels, however, this quantity is equivalent to 3.5 to 3.7 wt% oxygen.

[28] Guerrieri, D., Caffrey, P., and Rao, V., ''Investigation into the Vehicle Exhaust Emissions of High Percentage Ethanol Blends,'' SAE Technical Paper 950777, 1995, doi:10.4271/950777.

[29] The level of 5.8 wt% oxygen is the potential maximum oxygen level associated with E15 due to lighter than average gasoline components. The typical weight of oxygen in E15 is around 5.2%.

reflect such emissions. The commenter stated, ''At a minimum, EPA must conduct permeation testing on relevant fuel system materials to determine how permeation rates vary with ethanol content (*i.e.*, does the rate change between E10 and E15). EPA should then modify the Complex Model to reflect the change in permeation related evaporative emissions from the zero percent ethanol baseline.''

We acknowledge that the referenced study did not address evaporative emissions due to permeation. However, evaporative permeation was not tested during development of the Complex Model. Thus, the model never reflected permeation emissions for any level of ethanol (E0, E10, E15 or any values in between). Recent data from CRC show that although permeation emissions increase with higher levels of ethanol, the effects of E15 are likely to be comparable to E10.[30] Since the permeation rates of E15 are comparable to those of E10, it would be inappropriate to modify the model to account for E15 permeation emissions and not for E10. Major changes to the Complex Model such as would be needed to reflect permeation emissions for different levels of ethanol are beyond the scope of this rulemaking. Since evaporative permeation from E15 is comparable to that from E10, we believe today's regulatory change to treat E15 like E10 under the Complex Model is appropriate.

b. Representation of NO_X and Toxic Emissions in the Complex Model

One commenter expressed concern that the Guerrieri/Caffrey study showed that NO_X emissions on the six vehicles tested increased with increasing levels of ethanol. The commenter suggested that we therefore should modify the equations of the Complex Model to account for such increases in NO_X.

The NO_X emission performance requirements for RFG and conventional gasoline (CG) have not been applicable to most refiners since January 1, 2007, when the Tier 2 gasoline average sulfur standard of 30 ppm took effect (see 40 CFR 80.41(e)(2)(i) for RFG; and 40 CFR 80.101(c)(3)(i) for CG). This is the case for all refiners as of January 1, 2011 (see 40 CFR 80.41(e)(2)(ii) for RFG; and 40 CFR 80.101(c)(3)(ii)). The applicability of the Complex Model to gasoline certification has thus become limited as EPA's more recent clean gasoline standards take effect and require even greater emission reductions than those required by the RFG and antidumping programs. As a result, there is no current NO_X performance standard for RFG or conventional gasoline under the RFG or antidumping regulations, and the Complex Model is no longer used for modeling NO_X performance. Therefore, there would be no point in modifying the Complex Model regulations to account for additional NO_X emissions that may be associated with E15.

The same commenter also raised concern over our approach to air toxics. Specifically, in the NPRM, we stated that we would not need to modify the air toxics standard of the Complex Model because beginning January 1, 2011, the air toxics emission standards no longer apply for gasoline subject to the new mobile source air toxic (MSAT2) nationwide benzene standard for gasoline (see 40 CFR 80.41(e)(3) for RFG; and 40 CFR 80.101(c)(4) for CG). We noted, though, that small refiners can take advantage of the option for delayed compliance with the MSAT2 benzene standard until January 1, 2015. We stated that since small refiners typically certify CG as E0, with oxygenate blended downstream, their compliance with the toxics performance standard should be unaffected by the increase in ethanol content from E10 to E15. In addition, no small refiners currently produce RFG or are expected to produce RFG. Thus, there is no need to revise the toxics performance standard of the Complex Model.

The commenter recommended that EPA revise the toxics standards of the Complex Model to account for E15, and maintained that even if there are currently no small refiners producing RFG, EPA cannot preclude the possibility that they may do so in the future. However, to make the relevant change to the Complex Model would be a major undertaking and EPA continues to believe that such an undertaking is unnecessary and unwarranted in light of current and expected practices by small refiners. Furthermore, even if we were to make the suggested change, any possibility of relevance would disappear effective January 1, 2015. In light of these considerations, EPA has not modified its Complex Model regulations to account for air toxics emissions related to E15.

c. Adequacy of the Guerrieri/Caffrey Study To Justify Modification of the Complex Model Regulations

One commenter stated that the Guerrieri/Caffrey study that we used to document the effects of increased levels of ethanol on exhaust VOC emissions is inadequate. The commenter contended that the Guerrieri/Caffrey study used six vehicles, whereas the original study used to develop the Complex Model was based on 19 vehicles. In addition, the commenter points out that the gasoline for the Guerrieri/Caffrey study is not representative of the gasoline that is now sold, since neither the low sulfur gasoline rule nor the MSAT2 rule was in effect at that time.

With regards to the gasoline used in the Guerrieri/Caffrey study not being representative, the gasoline used for the study to develop the Complex Model was also different than today's. In fact, the gasolines used for both the original Complex Model study and the Guerrieri/Caffrey study were the same, providing some level of consistency between them. Both were designed to reflect the statutory baseline fuel for these standards—1990 fuel, not today's fuel. Notwithstanding the relatively few vehicles tested, the Guerrieri/Caffrey study provides data that allows EPA to estimate with reasonable confidence what would be the likely effect on exhaust emissions of blends of E15 in RFG as represented by the Complex Model. As stated in the preamble of the NPRM, the outcome of that study was consistent with our engineering judgment. That is, the general trend across vehicles of all ages is that the addition of ethanol to gasoline tends to lower VOC emissions due to its enleanment effect during open loop operation.

d. Representation of Other Renewable Fuels and Fuel Additives in the Complex Model

We proposed modifying the Complex Model only for the increased level of oxygen associated with E15. Two commenters suggested that the modification not be limited only to ethanol but to all renewable fuels and fuel additives that supply oxygen up to the new 5.8 wt% level. We believe that this comment has merit, since the Complex Model treats the parameter of oxygen independently of the oxygenate which supplies it. In other words, the model was developed using fuel oxygen level as an input independent of which oxygenate contributed the oxygen. In addition, we believe that the increased use of any oxygenate in the range of 4.0 wt% to 5.8 wt% would have effects on VOC emissions that are similar directionally to those of increased ethanol use in that range. Thus, we agree with the commenters that it is not necessary to limit the higher levels of oxygen in fuel (*i.e.,* above 4.0 up to 5.8 wt%) only to ethanol for purposes of modifications to the Complex Model

[30] *Enhanced Evaporative Emission Vehicles* (CRC Report: E–77–2), March 2010, and *Evaporative Emissions From In-Use Vehicles: Test Fleet Expansion* (CRC Report: E–77–2b), June 2010.

regulations. We will therefore modify the regulations to allow the Complex Model to be run for fuels containing oxygen levels up to 5.8 wt% from any oxygenate. However, it should be noted that this change to the Complex Model regulations has no effect on any other restrictions applicable to such fuels. For example, this modification to the Complex Model regulations does not relieve any party from the substantially similar prohibition in section 211(f)(4) of the Clean Air Act or the need, in appropriate circumstances, to receive a waiver of this prohibition.

e. Modification of the VOC Adjustment for RFG in Chicago and Milwaukee

Two commenters pointed out that the regulations for RFG (40 CFR 80.41) currently allow for an adjustment of the VOC performance standard for RFG containing between nine and 10 vol% ethanol in the Chicago and Milwaukee RFG areas. For RFG sold in these areas, the adjustment allows for a slightly lower emission reduction of VOCs as computed by the Complex Model. The amount of this adjustment is equivalent to a decrease in the RVP by approximately 0.3 psi. Since we proposed to allow the Complex Model to accommodate ethanol in RFG up to 15 vol%, one commenter argued that we should also allow such blends to be eligible for the VOC adjustment. The other commenter stated that unlike the 1.0 psi waiver for conventional gasoline, the VOC adjustment for RFG is not a statutory requirement and that ''the policy rationale behind the adjusted standard for E–10 applies equally to E–15.'' The commenter also stated that not extending the VOC adjustment in Chicago and Milwaukee to E15 would present additional logistical and financial challenges including the creation and storage of a lower RVP blendstock for splash-blending E15.

The VOC adjustment rule was promulgated in 2001 when RFG had an oxygen content requirement. E10 was typically used in the Chicago and Milwaukee RFG areas, generally resulting in a higher oxygen content in these areas than in other RFG areas. EPA's reasons for adopting the VOC adjustment rule can be found at 66 FR 37164 (July 17, 2001). In essence, at that time, EPA determined that, for purposes of ozone, the higher oxygen levels in E10 led to greater reductions in CO which offset to some extent VOC emissions. EPA reduced the VOC performance standard for E10 consistent with this offset.

Today's rulemaking is limited to consideration of issues associated with the entry of E15 into commerce. EPA is not in a position to reevaluate, and is not reevaluating, whether the VOC adjustment provision for E10 continues to be appropriate. The only issue before EPA in this rulemaking is whether the existing adjusted VOC performance standard for the Chicago and Milwaukee RFG areas should be extended to E15. In addition, it should be noted that section 1504 of the Energy Policy Act of 2005 (EPAct) requires that EPA remove the VOC performance standards for VOC–Control Region 2 that are currently in 40 CFR 80.41, and instead apply the standards in 40 CFR 80.41 for VOC–Control Region 1 for all RFG areas. When EPA implements this EPAct provision, it will consolidate the northern and southern VOC performance standards for RFG, adopting the southern VOC performance standards for all RFG areas. At that point the adjusted VOC performance standard would no longer apply in the Chicago and Milwaukee RFG areas. EPA intends to address this EPAct provision in a future rulemaking. However, EPA is not in a position to make these broad changes to the VOC performance standards in this rulemaking, and is limiting this action to issues associated with the introduction of E15 into commerce.

In that context, EPA believes it is appropriate to extend the current adjusted VOC performance standard to E15. If the adjusted VOC standard is extended and E15 is introduced into these RFG areas, it will likely replace E10. EPA expects that the base blend of gasoline would not change whether it is used to produce E10 or E15 RFG. By replacing E10, E15 RFG would directionally lead to greater reductions in VOC emissions in-use, as E15 produces a slightly lower increase in RVP than E10. In addition, E15 would likely lead to greater reductions in CO compared to E10, because of the increased oxygen content. Extending the adjusted VOC performance standard to E15 would therefore likely lead to somewhat greater reductions in VOCs and CO than would occur if the adjusted VOC standard is not extended to E15. This increase in emissions reductions is consistent with the provisions of Clean Air Act § 211(k)(1)(A), and starts to move at least directionally in a manner consistent with the EPAct provision. As such, it is appropriate at this time to make the narrow revision of extending the adjusted VOC standard to E15.

2. Final Approach Concerning the Complex Model and the VOC Adjustment Rule

For the reasons discussed above, EPA is revising the Complex Model regulations generally as proposed. The equations in the Complex Model relating to NO_X and toxics will not be changed. The Complex Model regulations will be modified to specify use in the model equations of a 4.0 wt% oxygen content for fuels with actual oxygen content greater than 4.0 wt% and up to 5.8 wt%. Thus, the VOC emissions performance for these fuels shall be evaluated as if the oxygen content were 4.0 wt% oxygen. Today's rule also modifies 40 CFR 80.41 so that the VOC adjustment in effect for Chicago and Milwaukee will apply to RFG with ethanol content between nine and 15 vol%.

H. Federalism Issues

In the NPRM, we discussed the potential federalism issues that the proposed rule might raise. We noted that the proposed mitigation measures were based on the authority in CAA section 211(c) as well as the recordkeeping and information collection authorities of the Act. In that context, we specifically discussed section 211(c)(4)(A), which prohibits states and political subdivisions from prescribing or attempting to enforce for purposes of motor vehicle emission control any control or prohibition ''respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine'' if EPA has prescribed a control or prohibition applicable to such characteristic or component of the fuel or fuel additive under section 211(c)(1). We explained that this prohibition does not apply to controls that are identical to prohibitions or controls adopted by EPA (section 211(c)(4)(A)(ii)) or to California (section 211(c)(4)(B)). We also noted that a state may adopt non-identical fuel control measures upon a showing of necessity under section 211(c)(4)(C).

In light of these CAA provisions, we indicated that we were not aware of any state rules or laws that would be preempted by the proposed rule if adopted. We explained that, to our knowledge, states have not controlled ethanol volumes in gasoline for purposes of motor vehicle emissions control. We also stated that the proposed rule, if adopted, would not require states to change their existing labels.

We received a comment from a state agency agreeing with our explanation of the scope and effect of the Federal preemption provisions of CAA section 211(c) and noting the importance of state regulation of fuel as allowed under the Act. Several commenters, however, expressed concern about the potential

for state fuel regulations to create a patchwork of requirements, and urged EPA to clarify that state laws cannot conflict with or undermine any of EPA's control measures. In particular, these commenters stated that EPA should specifically prohibit states from undermining the effectiveness of the EPA warning label through requiring conflicting or distracting ethanol labels.

Today's action is based on the authority in section 211(c)(1), as well as under sections 208 and 114 of the Act. As such, today's action leads to the express preemption of certain state actions that prescribe or enforce controls or prohibitions respecting ethanol content in gasoline, under section 211(c)(4)(A). Thus, because section 211(c)(4)(A) applies only to controls or prohibitions respecting any characteristics or components of fuels or fuel additives for use in motor vehicles or motor vehicle engines, *i.e.,* on road or highway vehicles, a state control or prohibition respecting ethanol content in fuel or fuel additives would be preempted only if it is ''for purposes of motor vehicle emission control.'' Further, states, other than California, may prescribe and enforce non-identical measures if they seek and obtain EPA approval of State Implementation Plan revisions containing such control measures, under section 211(c)(4)(C).

Additionally, aside from the express preemption in section 211(c)(4)(A), a state control for fuels or fuel additives may be implicitly preempted under the supremacy clause of the U.S. Constitution where the state requirement actually conflicts with Federal law by preventing compliance with the Federal requirement, or by standing as an obstacle to accomplishment of the Federal objectives. A state standard respecting ethanol content that is not subject to the express exemption provisions of section 211(c)(4)(A) nevertheless may be preempted because it meets the criteria for conflict preemption.

In light of the relevant statutory and constitutional provisions, EPA believes that questions regarding preemption of specific state fuel regulations should be addressed on a case-specific basis. Generally speaking, state requirements related to ethanol can co-exist with the misfueling mitigation provisions of today's rule, including, for example, the requirement for the specified E15 pump label, where the state requirements are not ''for purposes of motor vehicle emission control'' and do not conflict or undermine the effectiveness of the Federal misfueling mitigation measures.

IV. Other Issues Addressed by Commenters

A. Cost of Compliance

We calculated the proposed cost of compliance based on the periodic capital costs of labeling fuel dispensers, the onetime costs of the PTD requirements, and the annual cost of the survey requirements. The cost of the proposed labeling requirements was estimated at $1.04 million per year on an annualized basis. This estimate was conservative (tends to overestimate costs) as it was based on a label being placed on all pumps at all stations. Since we are requiring only labels at E15 pumps and we did not receive information indicating that our cost estimate for labeling was low, we are using the same estimate for the cost of the labeling requirement for the final rule.

Our estimate for the cost of the proposed PTD requirements in the NPRM was $0.56 million per year. We did not receive comments to the contrary. We have revised this estimate to $0.45 million per year. The revised estimate is based on a one-time cost of $4.1 million to regulated parties to modify the formatting of their existing PTDs to accommodate the new information which will be required as a result of the rule. After the one-time modification of PTD formatting is complete, we believe that there would be no significant additional costs associated with communicating the additional information required by today's rule to downstream parties in the distribution system (either in electronic or paper form). By amortizing the one-time reformatting costs over a period of 15 years at a 7% cost of capital, we arrive at an annualized cost of $450,000 for the PTD requirements.

We estimated the cost to implement the proposed survey provisions for conventional gasoline at $2 million per year and the cost of adding the proposed survey requirements to the existing RFG survey at $50,000 per year. We also estimated that the cost of RVP testing of the samples would be $200,000 per year. One commenter stated that EPA underestimated survey costs because the proposed requirement for same-day shipping would increase costs by as much as $1 million per year. For the final rule, we have removed the requirement for expedited shipping, so the basis for the commenter's concern is no longer applicable. Since in the final rule we are requiring RVP testing only of samples labeled as E15, we estimate that no more than $100,000 will be necessary to complete such testing. Thus, the total cost of the final survey requirements is estimated to be $2.15 million per year.

The total estimated cost of all the requirements is $3.64 million per year, slightly lower than the $3.75 million we estimated in the NPRM. We stated in the NPRM that the misfueling mitigation measures would reduce the potential for misfueling and consequent emission increases and repairs to nonroad products and MY2000 and older motor vehicles. We also stated that while there are no data to estimate the frequency at which emission increases and repairs or other potential complications might occur with misfueling in the absence of today's rule, even if these consequences were avoided for only a tiny fraction of vehicles and equipment not covered by the partial waivers (as opposed to actions taken independently by industry in response to conditions on the partial waiver), the savings would still far exceed the costs of compliance. In reaching this view, we considered the avoided costs of repairing or replacing catalysts, although the costs of other repairs and emission increases might also be avoided. We expected that emissions-related consequences would occur with enough frequency that the benefits of the proposed rule's requirements would clearly outweigh the relatively low costs. See 75 FR 68044, 68058, 081 (Nov. 4, 2010). During the public comment period for the proposed rule, additional information that might be useful to estimating costs or benefits was not submitted and did not otherwise become available. As a result, we continue to expect that the benefits of today's final rule will significantly outweigh the rule's low costs.

One commenter stated that our analysis failed to consider the cost for controlling the additional emissions from E15 at service stations, as well as the potential impacts to ground water and the associated costs of upgrading underground storage tank systems and the dispensers that deliver the fuel to the motor vehicle. The commenter argued that EPA must consider and include the costs associated with installing equipment to protect ground water and the air from releases and emissions due to any incompatibility of USTs and Stage I vapor recovery equipment with E15. Specifically, the commenter stated that dispensing E15 using Stage I and Stage II vapor recovery equipment at retail gasoline stations could result in increased emissions, and noted that currently no Stage I or Stage II equipment are listed as approved for fuels beyond E10. Also, the commenter stated that EPA had not considered the potential impacts to ground water

presumably from leakage of underground storage tanks in the event of E15 incompatibility. The commenter, citing the results of the DOE's National Renewable Energy Laboratory (NREL) report of November 12, 2010, stated that there are significant operational or material incompatibilities between legacy equipment and E15. The commenter asserted that the cost to replace a dispenser or an underground storage tank that may leak and release product to the ground water should also be included.

It is important to recognize that the cost impacts we are evaluating for the final rule are the costs associated with implementing the regulatory requirements established by the rule. These regulatory requirements will apply only to the extent fuel providers decide to make and sell E15. Neither the partial waivers nor today's rule require that E15 be made or sold. Therefore, while some retail stations may need to make upgrades in order to sell E15, the cost of making any upgrades is not attributable to any regulatory requirement adopted in this rule. If equipment upgrades are made as needed to dispense E15, it will be because retailers decide to sell E15, not because of a requirement to do so. We have therefore estimated the costs of implementing the requirements adopted by this rule for labeling, PTDs and surveys. While the commenter provided no information on costs of potential equipment upgrades, we recognize that there may be additional costs like those noted by the commenter associated with distributing and selling E15. However, those costs are not relevant to an evaluation of the costs of the requirements adopted in this rulemaking.

B. The Applicability of the Statutory 1.0 psi RVP Waiver to E15

EPA proposed that CAA section 211(h)(4) should be interpreted ''as limiting the 1.0 psi waiver [that the section provides] to gasoline-ethanol blends that contain 10 vol% ethanol, including limiting the provision concerning 'deemed to be in full compliance' to the same 10 vol% gasoline-ethanol blends.'' 75 FR 68061. We explained that EPA implements CAA section 211(h)(4) through 40 CFR 80.27(d), which provides that gasoline-ethanol blends that contain at least 9 vol% ethanol and not more than 10 vol% ethanol qualify for the 1.0 psi waiver of the applicable RVP standard. We requested comment on whether section 211(h) could be interpreted such that E15 would also be eligible for the RVP provisions in section 211(h)(4). 75 FR 68081.

We received several comments arguing that section 211(h)(4) should be read to apply to E15 and urging the Agency to amend the relevant regulations to reflect this reading. Commenters argued that reading section 211(h)(4) to extend the 1 psi waiver to E15 is consistent with EPA's fuel volatility rulemakings and the provision's legislative history and intent. Commenters pointed to the Agency's 1987 RVP rulemaking for support, noting that the Agency allowed blends containing gasoline and a minimum of 10% ethanol to exceed the RVP limits by 1 psi (see 52 FR 31305 (August 19, 1987)) and that Congress codified this approach in section 211(h)(4). The commenters argued that a later EPA rulemaking allowing a range of gasoline-ethanol blends (*i.e.*, gasoline ethanol blends that contain at least 9 vol% and no more than 10 vol% ethanol) instead of simply requiring exactly 10 vol% ethanol was an indication of EPA's discretion in interpreting section 211(h)(4). They also argued that EPA could reasonably interpret section 211(h)(4) as applying to E15. One commenter further argued that E15 meets the terms of the 1 psi waiver for 10 vol% blends because it contains gasoline and the minimum 10 vol% ethanol. Another commenter contended that section 211(h)(4) could be interpreted to provide authority for extending the 1 psi waiver to low to mid-level gasoline-ethanol blends that have received a waiver under section 211(f)(4). Finally, commenters mentioned that E15 would have a similar (if not slightly lower) RVP to E10 and would not exceed applicable RVP limits if the 1 psi waiver is applied. One commenter suggested further that the deemed to comply provision found in section 211(h)(4) of the Act does not tie the compliance of gasoline-ethanol blends directly to ethanol content. The commenter argued that the primary limitation on applying the 1 psi waiver would likely be actions that increase RVP not hard percentage limits on ethanol content, and since E15 would have similar if not lower RVP than E10, then E15 should receive the 1 psi waiver.

We also received several comments supporting our proposed interpretation. In today's rule, we are confirming our view that section 211(h)(4) limits the 1 psi waiver to fuel blends containing gasoline and 9–10 vol% ethanol, including limiting the provision concerning ''deemed to be in full compliance'' to the same 9–10 vol% gasoline-ethanol blends.

Evaporative emissions from motor vehicles and off-highway equipment are a major source of volatile organic compounds (VOCs) that contribute to ozone. The amount of evaporative emissions from a gasoline blend is closely related to its volatility, which generally increases when ethanol is blended with gasoline. RVP is the most common measure of gasoline volatility under ambient conditions. In 1989, EPA began reducing gasoline volatility by limiting its RVP. We provided an interim RVP level that was 1 psi higher ''for gasoline-ethanol blends commonly known as gasohol.'' 54 FR 11868, 11879 (March 22, 1989). In 1990, we promulgated additional RVP regulations that continued to provide a 1.0 psi RVP allowance for E10 so as not to require a special low-RVP blending gasoline. 55 FR 23658, 23660 (June 11, 1990).

Subsequently, in the 1990 CAA amendments, Congress largely codified our RVP regulations by adding a new section 211(h). That provision established 9.0 psi as the maximum RVP during the high ozone season, with authority for EPA to set a more stringent RVP level under certain circumstances. In section 211(h)(4), Congress also established that the RVP limit for fuel blends containing gasoline and 10 percent denatured anhydrous ethanol would be 1 psi higher than the RVP standard otherwise established in section 211(h). This is referred to as the 1 psi waiver. ''For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under paragraph (1).'' Section 211(h)(4). Congress also enacted a conditional defense against liability for violations of the RVP level allowed under the 1 psi waiver by stating that ''[p]rovided; however, That a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder if it can demonstrate that—(A) The gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection; (B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4) of this section; and (C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of this blend.'' Section 211(h)(4). This is referred to as the

''deemed to be in full compliance'' or the ''deemed to comply'' provision.

Following the 1990 amendments, EPA modified its RVP regulations to conform to the new provisions. In that rulemaking EPA ''did not propos[e] any change to the current requirement that the blend contain between 9 and 10 percent ethanol (by volume) to obtain the one psi allowance.'' 56 FR 64704, 64708 (December 12, 1991). We explained that ''this is consistent with Congressional intent [because] the nature of the blending process * * * further complicates a requirement that the ethanol portion of the blend be exactly 10 percent ethanol.'' 56 FR 24245. We also explained that the deemed to be in full compliance provision was ''a new defense against liability for violation of the ethanol blend RVP requirement [and that] EPA believes that this statutorily mandated defense is in addition to and does not supersede any of the defenses currently contained in the regulations.'' 56 FR 64708. Additionally, EPA explained that this provision would allow ''a party to demonstrate the elements of the new defense by production of a certification from the facility from which the gasoline is received [and that] this defense is limited to ethanol blends which meet the minimum 9 percent requirement in the regulations and the maximum 10 percent requirement.'' 56 FR 64708.

In the Energy Policy Act of 2005 (EPAct), Congress removed the requirement that reformulated gasoline contain oxygenate additives, and mandated that increasing volumes of renewable fuel be used in gasoline. In recognition of the expected increase in ethanol use resulting from these provisions, Congress added section 211(h)(5) to allow States to obtain an exclusion from the less stringent RVP limit under section 211(h)(4) for air quality reasons. ''Upon notification, accompanied by supporting documentation, from the Governor of a State that the RVP limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the RVP limitation established by paragraph (4), the RVP limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol [sold] in the area during the high ozone season.'' Section 211(h)(5).

The legislative history of the 1 psi waiver provision shows that it is for fuel blends containing gasoline and 10 percent ethanol. The purpose of the 1 psi waiver provision was to facilitate the participation of ethanol in the transportation fuel industry while also limiting gasoline volatility resulting from ethanol blending. Congress also intended for this provision to remove the possibility that ethanol blends would be used to circumvent the gasoline volatility restrictions. In 1987, prior to adoption of the 1990 Amendments, Congress considered a legislative provision that was identical in relevant part to section 211(h)(4). The legislative history of this provision shows that Congress based the 1 psi waiver on technical data indicating that blending gasoline with ethanol so that it contains 9–10 vol% ethanol results in an approximate 1 psi RVP increase. In sum, the text of section 211(h)(4) and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9–10 vol% ethanol.

In the 1991 rulemaking EPA also interpreted the deemed to comply provision in section 211(h)(4) as establishing an alternative compliance mechanism closely tied to the 1 psi waiver. It was interpreted as a conditional defense against liability for those parties who blend ethanol into gasoline to achieve 9–10% ethanol by volume. EPA continues to interpret the deemed to comply provision in this manner, such that it does not apply to ethanol blends greater than 10% by volume. This is consistent with the text and legislative history of section 211(h)(4) and (h)(5).

As noted above, in 1987 Congress considered a bill containing language identical in relevant part to section 211(h)(4). The provisions in that 1987 Senate bill were in response to EPA's 1987 proposed RVP rule, in which EPA proposed a 1 psi waiver for ethanol blends, but conditioned this waiver on the final blend being tested for RVP. The deemed to comply provision was Congress' response to concerns that this was an impractical and overly burdensome way to implement a 1 psi waiver for 10% gasohol. The Senate bill describes the deemed to comply provision as an alternative enforcement arrangement that simplified compliance with the 1 psi waiver. Thus, the deemed to comply provision is tied to the 1 psi waiver, and is designed to provide blenders the practical benefits of the 1 psi RVP waiver. It is not intended as a separate authorization for a relaxed RVP limit independent of the provision for a 1 psi waiver for 9–10% blends.

The text of the deemed to comply provision supports this interpretation. The provision is an addition after the 1 psi waiver that modifies the 1 psi waiver for 9–10% blends. It is not written as a free standing RVP limit that acts separate and apart from the 1 psi waiver for 9–10% blends of ethanol. Its reference to section 211(f)(4) is an indication that Congress was well aware of the existing section 211(f)(4) waiver conditions for 10% ethanol by volume. It refers to the ethanol blend not exceeding its section 211(f)(4) waiver conditions, and does not explicitly refer to 10% ethanol, but the condition of ''not exceed[ing]'' the section 211(f)(4) waiver limit cannot be read literally. A literal reading of this phrase would mean that blends containing 1%, or 2%, or 5% ethanol would all be blends that are deemed to comply, as they do not exceed the section 211(f)(4) waiver limit. Such a broad reading would make the 1 psi waiver for 9–10% blends meaningless. Moreover, had Congress intended that the deemed to comply provision would establish a different ethanol content for ethanol blends that would be eligible for a relaxed RVP limit, whether higher or lower content, it could have expressly employed terms to that effect.

The deemed to comply provision and the 1 psi waiver provision are each given consistent meaning by limiting the deemed to comply provision to a subset of lawful ethanol blends. The text of these provisions and their legislative history indicate that the deemed to comply provision was designed to address the same subset of ethanol blends that receive the 1 psi waver—blends of 9–10% ethanol. It was not a separate and free standing RVP provision aimed at another, larger subset of lawful ethanol blends, whether above or below 9–10% blends. Instead it was tied closely to the 1 psi waiver provision and limits the range of ethanol blends that can take advantage of the deemed to comply provision to blends of 9–10% ethanol.

Further support for this view is provided in the action Congress took in 2005 when it adopted section 211(h)(5). This provision treats the RVP limitation of section 211(h)(4) as a whole—it refers to the RVP ''limitation established by paragraph (4)'' and provides that when a State notifies EPA that such limitation increases emissions that contribute to air pollution in the State, then EPA is to apply the RVP limits of paragraph (1) ''in lieu of the [RVP] limitation established by paragraph (4)'' for blends of 10% ethanol. It draws no distinction between the 1 psi waiver provision and the deemed to comply provision when referring to the RVP limitation in section 211(h)(4). Section 211(h)(5) recognizes the potential that the relaxed RVP limit in section 211(h)(4) could

increase emissions that contribute to air pollution, and provides States with an appropriate solution. When a State notifies EPA that the RVP limit under section 211(h)(4) is contributing to an air pollution problem, EPA is to apply the more stringent RVP limit under paragraph (1) in lieu of the relaxed limit allowed under section 211(h)(4). These more stringent RVP limits are applied to blends of 9–10% ethanol. A straightforward reading of this provision is that Congress intended to provide States a meaningful and complete solution to emissions increases stemming from the relaxed RVP provisions in section 211(h)(4), not a partial solution. If the deemed to comply provision is read as applying to ethanol blends above or below 9–10% ethanol, however, this provision would provide no relief for emissions from various ethanol blends different from 9–10% ethanol, including E15. There is no indication Congress intended such a partial and inconsistent solution. Both the text and legislative history of this provision indicate Congress viewed section 211(h)(5) as addressing the potential for air pollution problems from the relaxed RVP limit in section 211(h)(4), which applies to blends of 9–10% ethanol.

In sum, EPA views these three provisions—the 1 psi waiver and the deemed to comply provision in section 211(h)(4), and the State relief provision in section 211(h)(5)—as related provisions that should be interpreted together in a way that harmonizes them and provides significance and a balanced meaning to each of them. EPA believes that this is reasonably done by viewing the 1 psi waiver provision in section 211(h)(4) as applying to blends of 9–10% ethanol; by viewing the deemed to comply provision as applying to the same subset of 9–10% ethanol blends, and not applying to blends above or below the range of 9–10%; and by viewing the provision for relief to States in section 211(h)(5) as applying to the same subset of 9–10% ethanol blends. This is consistent with the text and legislative history of the three provisions, which indicate that the RVP provisions in section 211(h)(4) are intended to work together to facilitate the use of ethanol blends of 9–10%, that the deemed to comply provision is not a free standing or separate provision that addresses fuels different from those covered by the 1 psi waiver, and that the provision for States in section 211(h)(5) is intended to provide relief co-extensive with the RVP limits in section 211(h)(4). This interpretation harmonizes all three provisions, gives each of them significant meaning, avoids making any of the provisions meaningless, and reasonably balances the various interests Congress was addressing in these provisions—controlling the RVP of gasoline and ethanol blends in a way that facilitates the practical downstream blending of ethanol while also preserving the ability of States to address the increased emissions associated with a relaxed RVP limit for ethanol blends.

Some commenters argued that section 211(h) should be interpreted such that E15 is eligible for the 1 psi waiver in section 211(h)(4), and that under section 211(h)(4) the 1 psi waiver applies to fuels that contain a minimum of 10% ethanol, while section 211(f)(4) sets the maximum ethanol content under the deemed to comply provision. None of the commenters discussed section 211(h)(5) or explained how their respective interpretations would interact with section 211(h)(5). For the reasons discussed above, EPA does not agree with the commenters' arguments. For a full discussion of the comments and EPA's response, see the Response to Comments document, which is in the docket for this rulemaking.

C. RVP and E15 Underground Storage Tank Transition

In the NPRM, we pointed out the potential problems that could occur if a higher RVP E10 fuel (*i.e.*, E10 fuel that took advantage of the statutory 1.0 psi RVP waiver) is commingled in underground storage tanks with a lower RVP E15 fuel (*i.e.,* E15 fuel that met the summertime conventional gasoline RVP standard without the 1.0 psi RVP increase, since the statutory 1.0 psi RVP waiver is not applicable to E15, and that also complied with the condition of the partial waivers limiting the summertime volatility of E15 to 9 psi). Commingling of these fuels would typically be an issue when a retail station decides to transition from selling E10 to E15, or E15 to E10, during the summertime ozone season. In these circumstances, if the retail station does not completely remove all E10 from a tank before E15 is added to the tank (or E15 before E10 is added), the gasoline fuel remaining in the dispensing station tank would likely violate the applicable RVP standards as well as the 9 psi RVP condition of the E15 partial waivers. For example, if a quantity of E10 at 10.0 psi RVP is blended with a quantity of E15 at 9.0 psi RVP, the resulting blend would have an ethanol content somewhere above 10 vol% (but below 15 vol%). The resulting blend would also have an RVP above 9.0 psi. Since the blend is above 10 vol% ethanol, it would not qualify for the 1.0 psi waiver. It would also be subject to the 9 psi RVP condition of the partial waivers, since the waivers cover any gasoline-ethanol blend above 10 vol% ethanol up to 15 vol% ethanol. In this way, commingling would likely result in fuel that does not comply with applicable RVP limits or the RVP condition of the partial waivers.

As mentioned in the NPRM, section 211(t) of the Clean Air Act, adopted in the Energy Policy Act of 2005, allows retail stations to blend compliant reformulated gasoline batches of non-ethanol blended and ethanol-blended gasoline in storage tanks twice a year as long as the duration of the blending period is no longer than 10 consecutive calendar days. However, the authority granted to the Agency for the transition of fuels in underground storage tanks was specifically limited to the case of reformulated gasoline, and this provision does not authorize a change in the RVP standards for blending down of E10 and E15 over time in non-reformulated gasoline areas. We sought comment on the issue of tank transition between E10 and E15 fuels and ways that the Agency could address this issue so that tank transition might be more easily accomplished.

A related issue is whether to specifically disallow the commingling of E10 and E15 or of blendstocks produced specifically for blending E10 and E15. In the NPRM we proposed a specific regulation that would prohibit combining ''any base gasoline or conventional blendstock for oxygenate blending intended for blending with E10 that took advantage of the 1 psi waiver applicable for 9–10 volume percent gasoline-ethanol blends with any gasoline or conventional blendstock for oxygenate blending intended for blending with E15, unless the resultant combination is designated, in its entirety, as an E10 blendstock for oxygenate blending''. Additionally, we proposed to prohibit combining ''any gasoline-ethanol blend containing E10 that took advantage of the 1 psi waiver applicable to 9–10 volume percent gasoline-ethanol blends, with any gasoline containing E0 or any gasoline blend containing E15''. (75 FR 68089, November 4, 2010). Such a prohibition would aid in preventing mixing that would result in gasoline in dispensing tanks that does not comply with the RVP standards due to tank transitions as described above.

Regarding tank transition in reformulated gasoline areas and a possible commingling prohibition, one commenter stated that it opposed a specific commingling prohibition because existing rules already prohibit

application of the 1 psi RVP waiver to other than E10 and any tank transition from E10 to E15 would likely happen only once. The commenter further stated that if such a prohibition is necessary, it should apply only in summer months. Other commenters also opposed a commingling prohibition and generally stated that such a prohibition would create unnecessary difficulties in introducing E15 into commerce.

As explained above, the 1.0 psi RVP waiver for conventional gasoline applies only to E10 blends, and it is already a violation of RVP standards to have an RVP higher than the standards for fuels not qualifying for the 1.0 psi RVP exemption, such as E15. Furthermore, it is correct that any prohibition against commingling, like the current RVP limitations, would apply only during the summertime ozone season. We also recognize that current regulatory requirements make it a violation to have higher RVP than allowed when commingling E10 and E15 in retail tanks. However, we believe that specific commingling regulations can provide additional, useful directions and incentive not to blend E10 and E15 in a way that would produce summertime conventional gasoline that violates the applicable RVP standard (and the 9 psi RVP limitation of the partial waivers). The prohibition against combining gasoline or blendstocks for E10 and E15 production prior to blending makes it clear that such blending will result in a blendstock that will in turn result in an unlawful gasoline (unless it is only used to make E10). In addition, the prohibition against commingling of E15 with E10 blends, which would likely occur in a dispensing tank, will help prevent unintended commingling of the two blends in dispensing tanks. Regarding summertime transitions, the additional prohibition makes it clear that commingling these types of fuel without one or the other fuel being completely drawn down in the tank is, in fact, prohibited. We are therefore adopting the commingling prohibitions as proposed. The PTDs described elsewhere in today's final rule will help ensure that parties in the distribution chain are adequately aware of the fuel they are distributing and loading into underground dispensing tanks and will clearly aid parties in avoiding violations.

Comments were received supporting the idea that relief should be granted to retail stations transitioning between E10 and E15. However, the only specific suggestion received was to apply the statutory 1 psi RVP waiver to E15. As discussed above, EPA interprets the relevant provisions of the Clean Air Act as authorizing the 1 psi RVP waiver only for gasoline-ethanol blends containing 9–10 vol% ethanol. In addition, we note that over the past several years most dispensing facilities with underground tanks have transitioned from E0 to E10 without significant difficulties. Transitioning tanks between E0 and E10 presents the same practical challenges as transitioning between E10 and E15 in terms of RVP compliance issues. Transitions between E0 and E10 have typically been accomplished by making the transition during the wintertime when the RVP compliance issue is not relevant, or during the summertime by drawing down the tank to effectively empty the tank prior to introducing the new fuel. These strategies should also be effective for transitioning to E15. For all of these reasons, we are not adopting any specific regulatory program for providing relief to retail stations in transitioning from E10 to E15.

D. Credit for RFG Downstream Oxygenate Blending

As stated in the NPRM, refiners (or importers) of reformulated blendstock for oxygenate blending (RBOB) are permitted to take credit for downstream oxygenate blending when complying with RFG standards if certain conditions are met. 40 CFR 80.69. To do so, the refiner's or importer's RBOB must be accompanied by a PTD that specifies the type and amount of oxygenate that must be added. In addition, the refiner or importer must have direct oversight of the addition of the oxygenate or, in the alternative, a survey of all RFG areas supplied by the refiner(s) or importer(s) must be performed to show that the requisite amount of oxygenate is added as specified by the PTD. In either case, EPA requested comment regarding how credit for RFG downstream oxygenate blending should be dealt with in light of the potential introduction of E15 into the RFG marketplace.

One commenter noted that PTDs and surveys should be sufficient to ensure that the requisite amount of oxygenate is added downstream so that the refiner can claim credit for the oxygenate addition when producing RBOB for RFG production.

As pointed out above, the regulations at 40 CFR 80.69 already allow credit for RFG downstream oxygenate blending through either direct oversight or an oxygenate survey for RFG areas utilizing a specific amount and type of oxygenate for blending purposes. Both of these approaches can accommodate blending of E15 if such blending were to be utilized in adding oxygenate downstream to produce RFG. Importantly, when utilizing either of these approaches, the refiner or importer must specify in the PTD for the RBOB the type and amount of oxygenate that must be added, such that the oxygenate addition will produce RFG that meets applicable standards (such as benzene and VOC) that ''formed the basis for the refiner's or importer's compliance determination for these parameters.'' [31] This would mean, for example, that if a refiner or importer wants to take credit for downstream blending of E15, they must either directly supervise the addition of E15 to their RBOB or conduct an appropriate survey to show that E15 has been added as directed in the PTD. Therefore, considering existing requirements such as direct oversight, surveys, and PTDs, we conclude that no regulatory change is needed regarding credit for RFG downstream oxygenate blending.

E. Compliance, Enforcement and Warranty

We proposed liability and penalty provisions for the proposed misfueling mitigation measures similar to the liability and penalty provisions found in other EPA fuels regulations. Many commenters raised issues concerning liability for violations of the proposed misfueling mitigation measures and other potential consequences of the use of, or transition to, E15. According to a number of commenters, fuel providers are unlikely to sell E15 until a variety of different liability issues are resolved. Although EPA is not in a position to address all of the liability issues raised by commenters, in this section we address those within our jurisdiction and clarify the responsibilities of various parties, including fuel producers, distributors, retailers, product manufacturers and consumers, for compliance with Agency misfueling prohibitions and CAA vehicle and engine warranty and other requirements under the Act.

In general, we believe the long-standing approach of EPA's fuels programs and vehicle, engine, and equipment emissions warranty regulations to assigning respective responsibilities for compliance with our regulations is also appropriate for E15. We expect the required label and other misfueling mitigation measures, as reinforced by a public outreach campaign, will minimize consumer use of E15 in vehicles, engines, and products not covered by the partial waiver decisions. The misfueling mitigation program should in turn minimize any liability that might arise

[31] 40 CFR 80.69(a)(10).

under the CAA or our regulations regarding misfueling with E15.

With regard to other transition issues within EPA's jurisdiction, we are continuing to make progress in developing guidance for determining whether existing underground storage tank systems are compatible for storing E15. We also plan to work with stakeholders to monitor and facilitate efforts to address other transition issues involving state, local and other requirements.

1. Proposed Approach

In the NPRM, we proposed specific prohibited acts for general misfueling mitigation purposes related to the distribution, sale, and use of gasoline containing greater than 10 vol% ethanol. We also proposed related liability and penalty provisions for noncompliance with the proposed prohibited acts. These proposed liability and penalty provisions included presumptive liability for parties in the fuel distribution system (consistent with presumptive liability provisions of other EPA fuels programs), affirmative defenses for liable parties, and penalties for violations.

With respect to prohibited acts, we proposed that all fuel providers (producers, manufacturers, distributors, wholesale purchaser-consumers, and retailers) would be prohibited from selling, introducing into commerce, or causing or allowing the sale or introduction into commerce of gasoline containing greater than 10 vol% ethanol into MY2000 and older light-duty motor vehicles, any heavy-duty gasoline vehicle, any motorcycle and all types of nonroad equipment. In addition, we proposed that fuel distributors who transport or store gasoline-ethanol blends, gasoline or blendstock for ethanol blending would be prohibited from increasing the ethanol content to exceed the value noted on the PTD. We also proposed that retailers and wholesale purchaser-consumers would be prohibited from dispensing E15 unless they comply with the dispenser labeling requirements. The final labeling and other misfueling mitigation requirements are discussed in section III.A. of this notice.

The liability and penalty provisions discussed in the proposal are similar to the liability and penalty provisions found in other EPA fuel regulations. Specifically, EPA fuels programs generally include a liability scheme for violations of prohibited acts that involves a rebuttable presumption of liability in specified circumstances. Under this approach, liability is imposed on the party in the fuel distribution system that controls the facility where the violation occurred and those parties, typically upstream in the fuel distribution system from the initially listed party, whose prohibited activities could have caused the nonconformity to exist.[32] We emphasized in the proposal that any person who commits a prohibited act, or causes another person to commit a prohibited act, would also be liable for a violation, so most parties in the chain of distribution would be subject to the rebuttable presumption of liability for committing prohibited actions or causing violations by other parties.[33]

The presumptive liability approach for violations of prohibited acts in our fuels programs also includes affirmative defenses to prohibited acts. Generally, affirmative defenses require a demonstration of all of the following: (1) The fuel provider did not commit or cause the violation; (2) the fuel provider has PTDs indicating the fuel was in compliance at its facility; and (3) except for retailers and wholesale purchaser-consumers, the fuel provider conducted a quality assurance program. In the proposal, we stated that if a consumer was liable for introducing gasoline with an ethanol content greater than 10 vol% into a vehicle, engine, or product not covered by the E15 partial waivers, then a self-service retailer would typically not be held liable for the consumer misfueling if the retailer's dispensers were labeled appropriately and did not condone or facilitate the misfueling.

While the NPRM proposed general misfueling mitigation provisions, it did not specifically address emissions warranties for vehicles, engines, and equipment or the effect of E15 use on the warranties. However, warranties are addressed by other EPA regulations and the effect of E15 use on the warranties is no different than the effect of other legal fuels on the warranties. EPA regulations require emission-related parts to be warranted that they are free from defects in materials and workmanship which cause failure to meet emissions standards and that at the time of sale the vehicles are designed, built, and equipped in compliance with EPA's regulations. (*See* CAA section 207(a).) There is also a performance warranty that applies in certain cases for the short testing conducted by state inspection and maintenance programs. (*See* CAA section 207(b).) The emissions warranty for light-duty motor vehicles is typically two years or 24,000 miles, except for the warranty for emission control computers and catalytic converters, which is eight years or 80,000 miles. Other vehicles and equipment may have warranties of a different duration, or warranties measured in hours of operation. Warranties may be made conditional on the use of a specified fuel as long as it is available, and the condition is appropriately noted in the owner's manual. (See *e.g.* 40 CFR. 85.2104, 1068.115). Despite the condition, however, manufacturers may not deny a warranty based on the use of a different fuel if that fuel did not cause the problem for which the warranty claim is made.

2. Consideration of Comments

a. Prohibited Acts and Liability Provisions

Commenters suggested that the proposed regulations do not, but should, prohibit intentional misfueling of vehicles with E15. We believe that the proposed regulations did include this prohibition. Specifically, the proposed regulations would prohibit consumer misfueling, whether intentional or not, and we are retaining that provision in today's final rule. Thus, today's final rule prohibits *any* person from introducing or causing the introduction of gasoline containing greater than 10 vol% ethanol into vehicles, engines, and products not covered by the E15 partial waivers, and prohibits causing or allowing the introduction of gasoline containing greater than 10 vol% ethanol into such vehicles, engines, and products.

Concerning retailers' liability, some commenters suggested that where a retailer complies with the E15 labeling requirements, the retailer should be completely immune from liability in the event that misfueling by consumers occurs. Other commenters suggested that proper labeling should shield retailers from liability absent evidence that the retailer encouraged or facilitated the misfueling. In contrast, still other commenters suggested that retailers be required to actively assess if misfueling is in fact occurring at self-serve pumps. We do not believe that retailers should be provided with blanket immunity based on labeling alone. The obligation of a retailer is to not misfuel and to not cause misfueling. Misfueling may occur in or as a result of varied circumstances, making a bright line provision—such as the suggested blanket immunity if dispensers are properly labeled—problematic. For

[32] As noted in the preamble to the proposed rule, an additional type of liability, vicarious liability, is imposed on branded refiners under EPA's fuels programs.

[33] As noted previously in this preamble, consumers are among the parties subject to the prohibition on misfueling with E15.

example, proper labeling by a retailer that is located at a marina and that sells fuel almost exclusively for use in boats may not be enough to avoid liability for misfueling of boats with E15. The variety of circumstances in which fueling occurs also do not warrant a blanket requirement of some specific degree of active oversight by the retailer. We therefore believe that it is appropriate to continue to apply the liability provisions of the misfueling mitigation regulations generally as proposed. The provisions finalized today are substantially the same as the liability provisions of other regulations governing the sale and use of fuels governed by the Act, and we believe that those provisions are effective. Like those regulations, today's final regulations specify which regulated parties can be held liable for infractions of the requirements, and allows assertion of defenses to such liability if a party meets specified conditions. For retailers, as well as other regulated parties, one of those conditions is that the prohibited act was not committed or caused by the party.

Commenters suggested that EPA specify in the regulations that a retailer did not ''cause'' misfueling at properly labeled pumps if the retailer did not condone or facilitate the misfueling. EPA does not believe that adding such a specification to the regulation is merited, for the reasons discussed above. If a misfueling violation does occur, we will assess all of the circumstances pertaining to the violation to assess whether a defense of lack of causation is valid, and if not, the severity of the violation. EPA will take into consideration all actions taken by the retailer to avoid misfueling. For the reasons discussed in Section III of this notice, today's rule requires that several specific misfueling mitigation measures be implemented and does not require that additional measures be employed at this time. However, retailers may choose to employ a variety of other measures, such as obtaining confirmation that the consumer desires to dispense E15 or equipping pumps that dispense only E15 with a distinctly colored nozzle hand warmer, as they consider appropriate for their circumstances. A party does not need to employ such measures in order to establish an affirmative defense to a presumption of liability, but EPA will consider any additional measures that a party has taken in assessing all of the circumstances that pertain to a violation.

Similarly, commenters also suggested that where a branded supplier of E15 complies with the labeling and other provisions, and has implemented a program notifying its retailers of the requirements of the law, it should be immune from liability if misfueling does occur. Based on EPA's experience with other fuels programs, EPA does not believe that merely notifying retailers about the requirements should immunize branded suppliers from liability for violations at retailers. As a result, EPA is not changing those defenses in the rule promulgated today. However, for a misfueling violation by a consumer at a branded retailer, EPA will consider all of the circumstances pertaining to the violation to assess whether a branded refiner's defense of lack of causation is valid, and if not, the severity of the violation.

b. Emissions Warranty Issues for Vehicles, Engines, and Equipment

Commenters expressed concern that motor vehicle manufacturers might void the emissions warranty of motor vehicles based on use of E15 and/or that warranty claims will increase in number as a result of E15 use. Based on the test data and analysis on which the E15 partial waivers were based, EPA believes that voiding a warranty claim will occur infrequently if at all for MY2001 and newer light-duty vehicles (*i.e.,* those for which the E15 partial waivers allow E15 to be sold for use) fueled with E15. For light-duty and other motor vehicles not covered by the partial waivers, EPA notes that to avoid honoring an emissions warranty, a manufacturer must not only condition the warranty on use of a fuel other than E15, it must also must show that use of E15 was relevant to the reason that the motor vehicle failed emissions testing. EPA regulations for nonroad equipment impose similar conditions on voiding warranties for nonroad equipment. In light of the misfueling prohibition and labeling requirements adopted in today's rule, we expect that consumers will have both the information and incentive they need to avoid misfueling with E15 and any damage to emission controls that misfueling could cause.

Commenters also stated that imposing a burden on manufacturers to show that E15 was the cause of a failure is unfair, and that manufacturers will be required to report more defects to EPA. Manufacturers currently make such determinations under the warranty provisions, as well as the defect reporting provisions (see 40 CFR 85.1901 *et seq.,* 1068.501). As with other emissions warranty related circumstances, manufacturers are in the best position to investigate and determine the cause of defects and emissions failures of their vehicles or equipment, and they are best equipped to make determinations regarding whether a warranty should be honored. We are interested in learning about any defects, or investigations of defects that are required to be reported, including those involving defects that may be related to use of E15, including misfueling with E15. However, we note that EPA will only order a recall based on a determination that a substantial number of vehicles would fail to meet their emissions standards when the motor vehicle is properly maintained and used (see *e.g.* 40 CFR 85.1802(a)).

c. Other Issues Outside of CAA Jurisdiction

Commenters expressed concern that consumers will make monetary claims against E15 retailers for damage to their vehicles or equipment related to E15 use. They asked that EPA indemnify retailers against such claims. As noted above, EPA does not believe that such damage will occur when E15 is properly used. In addition, the provisions adopted today provide a strong incentive for all parties, including consumers, to avoid misfueling. We also plan to work with stakeholders on an outreach effort, which should further limit misfueling incidences. However, we have no authority to, and do not intend to, address issues of liability that might be raised in litigation between private parties. EPA is only addressing issues relevant to its exercise of authority under the Clean Air Act. It is also worth noting that fuel providers are not required to make or offer E15 and do so of their own choosing.

Commenters expressed concern that E15 misfueling could result in personal injury to consumers, leading to safety recalls by other Federal agencies, among other things. They also suggested that EPA should address materials compatibility and safety issues regarding E15 and dispensing equipment and storage tanks. Other agencies act under their own authorities, and EPA is not in a position to address in this rule actions that may or may not be taken by other agencies in the future. As noted previously, EPA is developing final guidance for determining the compatibility of existing underground storage tanks with E15. The issues of materials compatibility and safety issues regarding dispensing equipment are addressed by state and/or local requirements.

3. Final Requirements

With respect to compliance and enforcement associated with prohibited acts to mitigate misfueling, today's final

rule includes liability requirements that are consistent with the liability requirements of other EPA fuels programs—retailers and other parties are presumptively liable for consumer misfueling and other violations, but parties are not liable if they can show they did not cause the misfueling. Consumers are also liable for misfueling their own vehicles, engines or products.

Regarding vehicle, engine, and equipment emissions warranties, under EPA warranty regulations, manufacturers may condition an emissions warranty on the use of a specific fuel but they may not deny a warranty on the use of a different fuel if that fuel did not cause problems.

F. Technical Basis for the Rule

These misfueling mitigation regulations are issued under CAA section 211(c) in order to prevent or minimize the emission increases that would occur if E15 is used in vehicles, engines, and products for which the waiver has been denied, specifically, MY2000 and older motor vehicles and all heavy-duty gasoline engines and vehicles, motorcycles and nonroad products. As described in the NPRM and E15 partial waiver decisions, our assessment of the potential emission consequences of E15 use indicates that the emission-related components of MY2001 and newer light-duty motor vehicles are durable for use on gasoline-ethanol blends up to E15. This conclusion is based on the results of DOE's Catalyst Study and other relevant test programs, as well as the Agency's engineering assessment of advances in motor vehicle technology (primarily control of the air-to-fuel ratio matched with advancements in catalyst formulations) and materials that have taken place in response to a series of important exhaust and evaporative emission requirements since MY2000 and in-use experience with E10. These requirements include the National Low Emission Vehicle and Tier 2 motor vehicle emission standards, Supplemental Federal Test Procedure compliance requirements, in-use durability requirements (required by the Compliance Assurance Program of 2000), enhanced evaporative emission standards, and E10 evaporative durability requirements.

Unlike for MY2001 and newer motor vehicles, there is very little, if any, test data with respect the effect of E15 use in MY2000 and older light-duty motor vehicles and all heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products. In addition, our engineering assessment for these vehicles, engines, and products identifies a number of emission-related concerns with the use of E15. For motor vehicles and heavy-duty gasoline engines and vehicles, these concerns include the potential for catalyst deterioration or catalyst failure, as well as materials compatibility issues that could lead to extremely elevated exhaust and evaporative emissions. For motorcycles and nonroad products, the misfueling concerns include the potential for elevated exhaust and evaporative emissions, as well as the potential for emissions impacts related to engine failure from overheating. As motorcycles and nonroad products have not been regulated as long as motor vehicles, and have much more diverse applications, they have not benefitted from the same advancements in technology as motor vehicles and could experience combustion and materials compatibility problems leading to increased emissions if operated on E15.

Based on these concerns, we proposed to prohibit the use of gasoline-ethanol blends greater than 10 vol% in MY2000 and older motor vehicles, and all heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products and invited comment on the prohibition's applicability to those vehicles, engines, and products. While some commenters stated that we should approve E15 for all motor vehicles, those comments pertain to the waiver decisions. We received no comments on our emissions-related technical justification for the proposed misfueling mitigation measures under CAA section 211(c).

It is worth noting that while the labeling requirements covered in Section III apply to E15, the prohibitions discussed in this section apply to all gasoline-ethanol blends greater than 10 vol% (*e.g.,* 20 vol% ethanol). This is consistent with our engineering assessment discussed in the NPRM which was based, in part, on enleanment of the air-to-fuel ratio. Ethanol enleans the air-to-fuel ratio which leads to increased exhaust gas temperatures and therefore potentially incremental deterioration of emission control hardware and performance over time. This enleanment stems from the fact that ethanol contains oxygen and consequently requires a lower air-to-fuel ratio to achieve the stoichiometric (ideal) mixture for combustion. Vehicles, engines, and equipment designed to operate on gasoline will therefore run leaner when operating on gasoline-ethanol blends. Older motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and especially nonroad products cannot fully compensate for the change in the stoichiometric air-to-fuel ratio as ethanol concentration increases. Over time, this enleanment caused by ethanol may lead to thermal degradation of the emissions control hardware and ultimately catalyst failure. Higher ethanol concentration will exacerbate the enleanment effect in these vehicles, engines, and equipment and therefore increase the potential of thermal degradation and risk of catalyst failure. In addition to enleanment, ethanol can cause materials compatibility issues which may lead to other component failure and ultimately exhaust and/or evaporative emission increases. Materials compatibility with ethanol is time, condition (e.g., temperature, pressure), and concentration dependent. Therefore, for older motor vehicles, heavy-duty gasoline engines and vehicles, motorcycles, and nonroad products, the potential for materials compatibility issues increases with higher ethanol concentration. We received no comments that the misfueling prohibition should be narrowed to E15.

It is not possible to precisely quantify the frequency at which these vehicles, engines, and products might experience problems with the use of E15. However, we believe that emission-related problems could potentially occur with enough frequency that the resulting emissions increases that would be avoided by avoiding misfueling would outweigh the relatively low cost imposed by the required misfueling mitigation regulations. The potential emission increases from misfueling warrant today's action, even if a very low percentage of vehicles, engines, and products experiences problems. As discussed above, the savings that would be achieved by avoiding misfueling also far outweigh the costs of this rule. Therefore, we are finalizing the misfueling mitigation measures we proposed with some refinements to make them more effective and/or less burdensome.

G. The Effect of the Rule on the Misfueling Mitigation Conditions of the Partial Waivers

In the NPRM, the Agency noted that some of the proposed misfueling safeguards parallel the conditions of the partial waiver decisions, and were expected to be a more efficient way to help ensure that the conditions of the waiver were met.[34] One commenter

[34] 75 FR 68044, 68046 (November 4, 2010). The partial waiver decisions require that fuel and fuel additive manufacturers (*i.e.* gasoline producers/importers, ethanol producers/importers, and oxygenate blenders) submit to EPA a plan prior to introduction of E15 into commerce that

Continued

suggested that if the proposed misfueling mitigation measures were adopted, EPA should remove or alter the misfueling mitigation conditions of the partial waivers to avoid placing requirements on industry that would be duplicative and unnecessary. Specifically, the commenter stated that fuel and fuel additive manufacturers should not have to submit plans to EPA that explain how a fuel or fuel additive manufacturer would meet the misfueling mitigation conditions of the partial waivers.

In response to the commenter's suggestion, it is important to clarify that the purpose of this rule is to mitigate misfueling with E15 that lawfully has been introduced into commerce under the terms of the waiver. The waiver conditions, and implementation of the waiver conditions, address a closely related but different issue—when, how and by whom E15 can be introduced into commerce under the partial waiver decisions. This rule only addresses the issue of mitigating misfueling in the event E15 is lawfully introduced into commerce under the partial waivers, and is issued under EPA's authority under section 211(c). In this rulemaking EPA did not propose and is not taking any action under section 211(f) with respect to the partial waivers that were previously issued. For example, in this rulemaking EPA is not modifying any of the conditions of the waivers, or making any decisions as to whether they have been met. Decisions related to compliance with the conditions on the waivers will be made separate and apart from this rulemaking.

EPA recognizes that one result of today's rule is that it will likely be easier for parties to show compliance with the misfueling mitigation conditions of the partial waivers. However, today's rule does not replace or supplant the waiver conditions themselves. The partial waivers allow E15 to be lawfully introduced into commerce for use in MY2001 and newer light-duty motor vehicles if certain conditions are met. Fuel and fuel additive manufacturers that desire to make and sell E15 must do so in compliance with the waivers' conditions, which include submission of a misfueling mitigation plan that provides, among other things, for E15 pump labels, PTDs indicating ethanol content and an ongoing survey of implementation of E15 content and labeling requirements. Today's rule will likely simplify compliance with many aspects of the required plan. For example, a fuel or fuel additive manufacturer may decide to reference the labeling and PTD requirements of the rule as part of its plan to meet the counterpart conditions of the waivers. EPA also expects that parties will be able to submit a single survey plan that will meet both the waiver condition as well as the separate regulatory requirements related to the survey adopted in this rule. Since the partial waivers and the rule require that survey plans be submitted to EPA for approval, EPA expects that compliance with the survey requirements of the waiver conditions and the rule will be accomplished with a single submission and approval process, covering both this rule and the waiver condition.

EPA believes that the misfueling mitigation plans submitted under the partial waivers will be especially useful when E15 is first introduced into the market. For instance, many downstream parties may not be aware of the new requirements that apply to E15 (*e.g.,* E15 pump labeling) early in any transition to E15. The first plans under the partial waivers may thus usefully address how the fuel or fuel additive manufacturer will work with downstream parties to ensure that the misfueling mitigations measures adopted today are properly implemented. Similarly, it may be appropriate for an ethanol manufacturer registered under 40 CFR Part 79 to sell ethanol for use in manufacturing E15 to address in its plan how parties that might use its product to make E15 will be informed of the misfueling mitigation requirements to which those parties would become subject under this rule (*e.g.,* labeling, PTDs) if they make E15. Such parties would include, for example, businesses that blend ethanol into gasoline to produce E15.

H. E15 Emissions and Anti-Backsliding

In the NPRM and in the partial waiver decisions, EPA discussed the relationship between the ethanol content of a gasoline-ethanol blended fuel and NO_x emissions. EPA concluded that, in general, as ethanol concentrations in gasoline increase, so do NO_x emissions. The Agency received several comments that argued that potential NO_x emission increases from E15 use would add to the formation of ground-level ozone and potentially adversely affect public health. Additionally, some commenters noted that such NO_x increases would add to the challenge some states and cities face in meeting the current national air quality standards for ozone and that EPA should take action to ameliorate potential adverse emissions effects from E15 use. Although such action is outside of the scope of today's rulemaking, the Agency has been performing analysis needed to support the anti-backsliding analysis required under the Energy Independence and Security Act of 2007. We are now in the process of assessing possible control measures to offset the potential increases in ozone and particulate matter that are expected to result from the increased use of renewable fuels required by the Energy Independence and Security Act of 2007 and in response to the May 21, 2010, Presidential Memorandum Regarding Fuel Efficiency Standards. (NO_x emissions contribute to the formation of both pollutants.) We will incorporate the results of our analysis under this assessment in a proposal on new motor vehicle and fuel control measures.

V. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This rule contains new information requirements which will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These information collection requirements are not enforceable until OMB approves them.

This final rule contains information collection provisions that permit a party to apply for approval of an alternative or additional E15 label. We anticipate that this provision will be utilized by some refiners for their branded retailers, as well as by some individual retailers and wholesale purchaser-consumers.

A party may elect to satisfy the survey requirements of this rule individually

demonstrates how the fuel or fuel additive manufacturer will implement reasonable measures to ensure that misfueling does not occur in vehicles and engines not approved for use of E15. Reasonable measures to ensure against misfueling include, but are not limited to, fuel pump labeling, proper documentation of ethanol content on PTDs, and the implementation of an ongoing survey program, in addition to any other reasonable measures EPA determines are appropriate. *See* 75 FR 68149–68150.

rather than through using a nationwide survey option (*i.e.,* they may elect ''Survey Option 1'' as described above in section III.C). In such circumstances, the individual information collection requirements associated with ''Survey Option 1'' will apply. Parties that may be subject to survey information collection requirements include gasoline refiners, gasoline and ethanol importers, gasoline and ethanol blenders (including terminals and carriers), and ethanol producers.

Under the terms of the E15 partial waiver, fuel and fuel additive manufacturers must submit a written plan to EPA for approval.[35] The plan must include provisions designed to prevent misfueling. The plan must be submitted by all fuel and fuel additive manufacturers, regardless of whether a party elects ''Survey Option 1'' (individual) or ''Survey Option 2'' (nationwide). Parties that may be subject to this information collection item may include gasoline refiners, gasoline and ethanol importers, gasoline and ethanol blenders (including terminals and carriers), and ethanol producers.

This rule contains provisions related to product transfer documents (PTDs). Parties upstream of the retail station or wholesale purchaser-consumer will be required to develop and program new codes and statements for PTDs. These codes will reflect the ethanol content, as well as the Reid Vapor pressure (RVP), as described in section III.B. Parties subject to this one time burden include gasoline refiners, gasoline and ethanol importers, and gasoline and ethanol blenders (including terminals and carriers).

In addition to the one time burden of establishing/programming codes and statements for PTDs, parties will be required to apply the new codes and statements to PTDs as part of the normal course of business. Typically, refiners and wholesale purchaser-consumers who are not acting as blenders merely accept PTDs given to them by upstream parties. The following parties may have the burden of applying codes and statements: gasoline refiners, gasoline and ethanol importers, gasoline and ethanol blenders (including terminals and carriers).

EPA estimates that there will be a total of 6,211 respondents, submitting a total of 44,010,211 responses annually. We estimate an annual total of 37,350 hours for all respondents and responses. The total annual cost of this information collection request is estimated at $4,102,524.

We estimate that the average annual burden per respondent is six (6) hours and that the average annual cost per respondent is $661. We estimate an average of .000849 hours per response. (It should be noted that the reason for this short average time per response is that nearly all of the responses will take approximately one second and represent the time it takes to apply an automated code or statement to a PTD.)

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are petroleum refiners and importers, ethanol producers, ethanol blenders, gasoline terminals, gasoline stations with convenience stores, and other gasoline stations. While there are small entities in each of these market sectors as discussed in Section III.F., the cost impact on any particular entity is expected to be a tiny fraction of annual revenues.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The total annual cost is expected to be $3.64 million. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action primarily affects the private sector, specifically petroleum refiners and importers, ethanol producers, ethanol blenders, gasoline terminals, gasoline stations with convenience stores, and other gasoline stations.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Any preemption of State or local controls under section 211(c)(4)(A), based on issuance of this rule under section 211(c)(1), would only apply to State or local controls adopted for purposes of motor vehicle emissions control. This rule will be implemented at the Federal level and impose compliance costs only on petroleum refiners and importers, gasoline stations with convenience stores, and other gasoline stations. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials. The Agency did not receive any comments from states or local governments that cited a concern over state preemption or federalism.

[35] 75 FR 68094, 68149–68150 (November 4, 2010).

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on petroleum refiners, importers, oxygenate blenders, gasoline stations with convenience stores, and other gasoline stations. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (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. This final rule has a labeling requirement, a prohibition against the use of gasoline containing more than 10 vol% ethanol in vehicles, engines and equipment not covered by the partial waiver decisions, a PTD requirement; and a survey requirement.

There is no cost for the prohibition. The cost of the label is estimated at $5 per year per service station. This is a tiny fraction of the station's annual sales, and is not expected to significantly affect energy distribution. The cost of the PTD requirement is estimated at $0.45 million per year. This cost is a one-time cost to reformat PTDs amortized over 15 years; any additional costs are expected to be insignificant. The total cost of the survey requirements is estimated to be $2.15 million per year. The projected total cost of the final provisions is $3.64 million per year (see section IV for a more detailed discussion of these estimated costs). These costs are not expected to increase the cost of energy production or distribution in excess of one percent. Therefore, this final action is not expected to have a significant adverse energy effect.

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action would affect all gasoline stations that choose to sell E15 and therefore will not affect any particular area disproportionately.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 24, 2011.

VI. Legal Authority and Judicial Review

A. Legal Authority

As explained above, we are finalizing the misfueling mitigation measures pursuant to our authority under CAA section 211(c)(1). This section gives EPA authority to ''control or prohibit the manufacture, introduction into commerce, offering for sale, or sale'' of any fuel or fuel additive (A) Whose emission products, in the judgment of the Administrator, cause or contribute to air pollution ''which may be reasonably anticipated to endanger public health or welfare'' or (B) whose emission products ''will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use'' were the fuel control or prohibition adopted. In Section VII [36] of the proposed rule, we explained how under section 211(c)(1), EPA may adopt a fuel control if at least one of the two criteria above is met. We also explained that we were proposing the misfueling mitigation measures based on both of these criteria. We stated that under section 211(c)(1)(B), we believed that E15 would significantly impair the emission control systems used in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products. This led to our conclusion that under section 211(c)(1)(A), the likely result would be increased HC, CO and NO_X emissions when these particular engines, vehicles and nonroad products use E15.

EPA received no comments on our analysis in Section VII during the public comment period. Therefore, EPA is finalizing these misfueling mitigation measures under our authority in section

[36] Section VII. ''What is our legal authority for proposing these misfueling mitigation measures?'' 75 FR 68044, 68081 (November 4, 2010).

211(c)(1). We fully include by reference our analysis in Section VII of the proposed rule as our basis for doing so since our rationale is the same for this final action.

B. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 23, 2011. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Diesel, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 23, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

■ 2. Section 80.40(c)(1) is amended to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) Adjusted VOC gasoline for purposes of the general requirements in 80.65(d)(2)(ii), and the certification procedures in this section is gasoline that contains 10 to 15 volume percent ethanol, or RBOB intended for blending with 10 to 15 volume percent ethanol, that is intended for use in the areas described at 80.70(f) and (i), and is designated by the refiner as adjusted VOC gasoline subject to less stringent VOC standards in 80.41(e) and (f). In order for adjusted VOC gasoline to qualify for the regulatory treatment specified in 80.41(e) and (f), reformulated gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9 percent and no more than 15 percent (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by use of one of the testing methodologies specified in 80.46(g).

* * * * *

■ 3. Section 80.45 is amended by adding a new paragraph (c)(1)(iii)(C) and by revising paragraphs (f)(1)(i) and (f)(1)(ii) to read as follows:

§ 80.45 Complex emissions model.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) During Phase II, fuels with an oxygen concentration greater than 4.0 weight percent and not more than 5.8 weight percent shall be evaluated with the OXY fuel parameter set equal to 4.0 percent by weight when calculating VOCE using the equations described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

* * * * *

(f) * * *

(1) * * *

(i) For reformulated gasolines:

Fuel property	Acceptable range
Oxygen	0.0–5.8 weight percent.
Sulfur	0.0–500.0 parts per million by weight.
RVP	6.4–10.0 pounds per square inch.
E200	30.0–70.0 percent evaporated.
E300	70.0–100.0 percent evaporated.
Aromatics	0.0–50.0 volume percent.
Olefins	0.0–25.0 volume percent.
Benzene	0.0–2.0 volume percent.

(ii) For conventional gasoline:

Fuel property	Acceptable range
Oxygen	0.0–5.8 weight percent.
Sulfur	0.0–1000.0 parts per million by weight.
RVP	6.4–11.0 pounds per square inch.
E200	30.0–70.0 evaporated percent.
E300	70.0–100.0 evaporated percent.
Aromatics	0.0–55.0 volume percent.
Olefins	0.0–30.0 volume percent.
Benzene	0.0–4.9 volume percent.

* * * * *

■ 4. A new subpart N is added to read as follows:

Subpart N—Additional Requirements for Gasoline-Ethanol Blends

Sec.

Subpart N—Additional Provisions for Gasoline-Ethanol Blends

§ 80.1500 Definitions.

The definitions in § 80.2 apply to this subpart. For purposes of this subpart only:

Blendstock for oxygenate blending means gasoline blendstock which could become gasoline solely upon the addition of an oxygenate.

Conventional blendstock for oxygenate blending means gasoline blendstock which could become conventional gasoline solely upon the addition of an oxygenate.

Carrier has the same meaning as defined in § 80.2(t).

Conventional gasoline has the same meaning as defined in § 80.2(ff).

E0 means a gasoline that contains no ethanol.

E10 means a gasoline-ethanol blend that contains at least 9.0 and no more than 10.0 volume percent ethanol.

E15 means a gasoline-ethanol blend that contains greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol.

EX means a gasoline-ethanol blend that contains less than 9 volume percent ethanol where X equals the maximum volume percent ethanol in the gasoline-ethanol blend.

EXX means a gasoline-ethanol blend above E15 where XX equals the maximum volume percent ethanol in the gasoline-ethanol blend.

Ethanol blender has the same meaning as defined in § 80.2(v).

Ethanol importer means a person who brings ethanol into the United States (including from the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) for use in motor vehicles and nonroad engines.

Ethanol producer means any person who owns, leases, operates, controls, or supervises a facility that produces ethanol for use in motor vehicles or nonroad engines.

Flex-fuel vehicle has the same meaning as flexible-fuel vehicle as defined in § 86.1803–01.

Fuel dispenser means the apparatus used to dispense fuel into motor vehicles or nonroad vehicles, engines or equipment, or into a portable fuel container as defined at § 59.680.

Gasoline has the same meaning as defined in § 80.2(c).

Gasoline importer means an importer as defined in § 80.2(r) that imports gasoline or gasoline blending stocks that could become gasoline solely upon the addition of oxygenates.

Gasoline refiner means a refiner as defined as in § 80.2(i) that produces gasoline or gasoline blending stocks that could become gasoline solely upon the addition of oxygenates.

Oxygenate blender has the same meaning as defined in § 80.2(mm).

Oxygenate blending facility has the same meaning as defined in § 80.2(ll).

Regulatory control periods has the same meaning as defined in § 80.27(a)(2)(ii) or in any State Implementation Plan (SIP) approved or promulgated under §§ 110 or 172 of the Clean Air Act.

Retail outlet has the same meaning as defined § 80.2(j).

Retailer has the same meaning as defined in § 80.2(k).

Survey series means the four quarterly surveys that comprise a survey program.

Sampling strata means the three types of areas sampled during a survey which include the following:

(1) Densely populated areas;

(2) Transportation corridors; and

(3) Rural areas.

Wholesale purchaser-consumer has the same meaning as defined in § 80.2(o).

§ 80.1501 What are the labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline-ethanol blends that contain greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol?

(a) Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, gasoline-ethanol blends that contain greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol shall affix the following conspicuous and legible label to the fuel dispenser:

Attention
E15
Up to 15% ethanol
Use only in
- **2001 and newer passenger vehicles**
- **Flex-fuel vehicles**

Don't use in other vehicles, boats, or gasoline-powered equipment. It may cause damage and is prohibited by Federal law.

(b) Labels under this section shall meet the following requirements for appearance and placement:

(1) *Dimensions.* The label shall measure 3 and 5⁄8 inches wide by 3 and 1⁄8 inches high.

(2) *Placement.* The label shall be placed on the upper two-thirds of each fuel dispenser where the consumer will see the label when selecting a fuel to purchase. For dispensers with one nozzle, the label shall be placed above the button or other control used for selecting E15, or in any other manner which clearly indicates which control is used to select E15. For dispensers with multiple nozzles, the label shall be placed in the location that is most likely to be seen by the consumer at the time of selection of E15.

(3) *Text.* The text shall be justified and the fonts and backgrounds shall be as described in paragraphs (b)(3)(i) through (vi) and (b)(4)(i) through (iv) of this section.

(i) The word ''*Attention''* shall be in 20-point, orange, Helvetica Neue LT 77 Bold Condensed font, and shall be placed in the top 1.25 inches of the label as further described in (b)(4)(iii) of this section.

(ii) The word ''E15'' shall be in 42-point, orange, Helvetica Black font, and shall be placed in the top 1.25 inches of the label.

(iii) The ethanol content: ''Up to 15% ethanol'' shall be in 14-point, center-justified, orange, Helvetica Black font in the top 1.25 inches of the label, below the word E15.

(iv) The words ''Use only in'' shall be in 20-point, left-justified, black, Helvetica Bold font in the top 1.25 inches of the label.

(v) The words, and symbols ''• 2001 and newer passenger vehicles • Flex-fuel vehicles'' shall be in 14-point, left-justified, black, Helvetica Bold font.

(vi) The remaining two sentences shall be in 12-point, left-justified, Helvetica Bold font, except that the word ''prohibited'' in the second sentence shall be in 12-point, black, Helvetica Black Italics font.

(4) *Color.* (i) The background of the top 1.25 inches of the label shall be black.

(ii) The background of the bottom 1.75 inches of the label shall be orange.

(iii) The label shall have on the upper left side of the label a diagonal orange stripe that is .3125 inches tall. The stripe shall be placed as far down and across the label as is necessary so as to as to create a black triangle of the upper left corner of the label whose vertical side is contiguous to the vertical edge of the label and is.4375 inches long, and whose horizontal side is contiguous to the horizontal edge of the label and is 1.0 inches long. The word ''Attention'' shall be centered to the upper edge of this stripe.

(5) Alternative labels to those specified in this section may be used if approved by EPA in advance. Such labels must contain all of the informational elements specified in paragraph (a) of this section, and must use colors and other design elements similar in substance and appearance to the label required by this section. Such labels may differ in size and shape from

the label required by this section only to a small degree, except to the extent a larger label is necessary to accommodate additional information or translation of label information.

(i) If you use U.S. Mail, send a request for approval of an alternative label to: U.S. EPA, Attn: E15 Alternative Label Request, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(ii) If you use an overnight or courier service, send a request for approval of an alternative label to: U.S. EPA, Attn: E15 Alternative Label Request, 6406J, 1310 L Street, NW., 6th Floor, Washington, DC 20005. (202) 343–9038.

§ 80.1502 What are the survey requirements related to gasoline-ethanol blends?

Any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend that is intended for use in or as E15 shall comply with the survey program requirements in either paragraph (a) or paragraph (b) of this section. These same parties are also subject to paragraphs (c), (d) and (e) of this section regardless of whether they choose the survey program requirements in paragraph (a) or paragraph (b) of this section. In the case of ethanol producers and ethanol importers, the ethanol that is produced or imported shall be deemed as intended for use in E15 unless an ethanol producer or an ethanol importer demonstrates that it was not intended for such use.

(a) *Survey option 1.* In order to satisfy the survey program requirements, any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend intended for use in or as E15 shall properly conduct a program of compliance surveys in accordance with a survey program plan which has been approved by EPA in all areas which may be reasonably expected to be supplied with their gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend if these may be used to manufacture E15 or as E15 at any time during the year. Such approval shall be based upon the survey program plan meeting the following criteria:

(1) The survey program shall consist of at least quarterly surveys which shall occur during the following time periods in every year during which the gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer introduces E15 into commerce:

(i) One survey during the period January 1 through March 31;

(ii) One survey during the period April 1 through June 30;

(iii) One survey during the period July 1 through September 30; and

(iv) One survey during the period October 1 through December 31.

(2) The survey program plan shall meet all of the requirements of paragraph (b), except paragraphs (b)(4)(ii) and (b)(4)(v) of this section. The survey program plan shall specify the sampling strata, clusters and area, and number of samples to be included. Notwithstanding paragraph (b)(2) of this section, in order to comply with this paragraph the survey plan need not be conducted by a consortium.

(b) *Survey option 2.*

(1) To comply with the requirements under this paragraph (b), any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend intended for use in or as E15 must participate in a consortium which arranges to have an independent survey association conduct a statistically valid program of compliance surveys pursuant to a survey program plan which has been approved by EPA, in accordance with the requirements of paragraphs (b)(2) through (b)(4) and (b)(6) of this section.

(2) The consortium survey program under this paragraph (b) must be:

(i) Planned and conducted by a survey association that is independent of the ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted. In order to be considered independent:

(A) Representatives of the survey association shall not be an employee of any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer;

(B) The survey association shall be free from any obligation to or interest in any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer; and

(C) The ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted shall be free from any obligation to or interest in the survey association.

(ii) Conducted at retail outlets that sell gasoline; and

(iii) Represent all gasoline dispensed nationwide.

(3) *Independent Survey Association Requirements.* The consortium described in paragraph (b)(1) of this section shall require the independent survey association conducting the surveys to:

(i) Submit to EPA for approval each calendar year a proposed survey program plan in accordance with the requirements of paragraph (b)(4) of this section.

(ii) Obtain samples of gasoline offered for sale at gasoline retail outlets in accordance with the survey program plan approved under this paragraph (b), or immediately notify EPA of any refusal of retail outlets to allow samples to be taken.

(iii) Test, or arrange to be tested, the samples required under paragraph (b)(3)(ii) of this section for Reid vapor pressure (RVP), and oxygenate content as follows:

(A) Samples collected at retail outlets shall be shipped the same day the samples are collected via ground service to the laboratory and analyzed for oxygenate content. Samples collected at a dispenser labeled E15 in any manner, or at a tank serving such a dispenser, shall also be analyzed for RVP. Such analysis shall be completed within 10 days after receipt of the sample in the laboratory. Nothing in this section shall be interpreted to require RVP testing of a sample from any dispenser or tank serving it unless the dispenser is labeled E15 in any manner.

(B) Any laboratory to be used by the independent survey association for oxygenate or RVP testing shall be approved by EPA and its test method for determining oxygenate content shall be a method permitted under § 80.46(g), and its test method for determining RVP shall be the method permitted under § 80.46(b).

(iv) In the case of any test that yields a result that does not match the label affixed to the product (e.g., a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as ''E15'' or a sample containing greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as ''E15''), or the RVP standard of § 80.27(a)(2), the independent survey association shall, within 24 hours after the laboratory receives the sample, send notification of the test result as follows:

(A) In the case of a sample collected at a retail outlet at which the brand name of a gasoline refiner or gasoline importer is displayed, to the gasoline refiner or gasoline importer, and EPA.

This initial notification to a gasoline refiner or gasoline importer shall include specific information concerning the name and address of the retail outlet, contact information, the brand, and the ethanol content, and the RVP if required, of the sample.

(B) In the case of a sample collected at other retail outlets, to the retailer and EPA, and such notice shall contain the same information as in paragraph (b)(3)(iv)(A) of this section.

(C) The independent survey association shall provide notice to the identified contact person or persons for each party in writing (which includes e-mail or facsimile) and, if requested by the identified contact person, by telephone.

(v) Confirm that each fuel dispenser sampled is labeled as required in § 80.1501 by confirming that:

(A) The label meets the appearance and content requirements of § 80.1501.

(B) The label is located on the fuel dispenser according to the requirements in § 80.1501.

(vi) In the case of a fuel dispenser that is improperly labeled, or whose fuel does not meet the RVP standards of § 80.27(a)(2) the survey association shall provide notice as provided in paragraphs (b)(2)(iv)(A) through (C) of this section.

(vii) Provide to EPA quarterly and annual summary survey reports which include the information specified in paragraph (b)(5) of this section.

(viii) Maintain all records relating to the surveys conducted under this paragraph (b) for a period of at least five (5) years.

(ix) Permit any representative of EPA to monitor at any time the conducting of the surveys, including sample collection, transportation, storage, and analysis.

(4) *Survey Plan Design Requirements.* The proposed survey program plan required under paragraph (b)(3)(i) of this section shall, at a minimum, include the following:

(i) *Number of Surveys.* The survey program plan shall include four quarterly surveys each calendar year. The four quarterly surveys collectively are called the survey series as defined in § 80.1500.

(ii) *Sampling Areas.* The survey program plan shall include sampling in all sampling strata, as defined in § 80.1500, during each survey. These sampling strata shall be further divided into discrete sampling areas or clusters. Each survey shall include sampling in at least 40 sampling areas in each stratum which are randomly selected.

(iii) *No advance notice of surveys.* The survey plan shall include procedures to keep the identification of the sampling areas that are included in any survey plan confidential from any regulated party prior to the beginning of a survey in an area. However, this information shall not be kept confidential from EPA.

(iv) *Retail outlet selection.*

(A) The retail outlets to be sampled in a sampling area shall be selected from among all retail outlets in the sampling area that sell gasoline, with the probability of selection proportionate to the volume of gasoline sold at the retail outlets; the sample should also include retail outlets with different brand names as well as those retail outlets that are unbranded.

(B) In the case of any retail outlet from which a sample of gasoline was collected during a survey and determined to have an ethanol content that does not match the fuel dispenser label (e.g. a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as ''E15'' or a sample with greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as ''E15'') or determined to have a dispenser containing fuel whose RVP does not comply with § 80.27(a)(2), that retail outlet shall be included in the subsequent survey.

(C) One sample of each product dispensed as gasoline shall be collected at each retail outlet, and separate samples shall be taken that represent the gasoline contained in each gasoline storage tank unless collection of separate samples is not practicable.

(v) *Number of samples.*

(A) The minimum number of samples to be included in the survey plan for each calendar year shall be calculated as follows:

$$n = \left\{\left[\left(Z_\alpha + Z_\beta\right)\right]^2 \Big/ \left(4 * \left[arc\sin\left(\sqrt{\phi_1}\right) - arc\sin\left(\sqrt{\phi_0}\right)\right]^2\right)\right\} * St_n * F_a * F_b * Su_n$$

Where:

n = minimum number of samples in a year-long survey series. However, in no case shall n be smaller than 7,500.

Z_α = upper percentile point from the normal distribution to achieve a one-tailed 95% confidence level (5% α-level). Thus, Z_α equals 1.645.

Z_β = upper percentile point to achieve 95% power. Thus, Z_β equals 1.645.

ϕ_1 = the maximum proportion of non-compliant stations for a region to be deemed compliant. In this test, the parameter needs to be 5% or greater, *i.e.,* 5% or more of the stations, within a stratum such that the region is considered non-compliant. For this survey, ϕ_1 will be 5%.

ϕ_o= the underlying proportion of non-compliant stations in a sample. For the first survey plan, ϕ_o = will be 2.3%. For subsequent survey plans, ϕ_o = will be the average of the proportion of stations found to be non-compliant over the previous four surveys.

St_n = number of sampling strata. For purposes of this survey program, St_n equals 3.

F_a = adjustment factor for the number of extra samples required to compensate for collected samples that cannot be included in the survey, based on the number of additional samples required during the previous four surveys. However, in no case shall the value of F_a be smaller than 1.1.

F_b = adjustment factor for the number of samples required to resample each retail outlet with test results exceeding the labeled amount (e.g., a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as ''E15'', a sample with greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as ''E15''), or a sample dispensed from a fuel dispenser labeled as ''E15'' with greater than the applicable seasonal and geographic RVP pursuant to § 80.27, based on the rate of resampling required during the previous four surveys. However, in no case shall the value of F_b be smaller than 1.1.

Su_n = number of surveys per year. For purposes of this survey program, Su_n equals 4.

(B) The number of samples determined pursuant to paragraph (b)(4)(v)(A) of this section, after being incremented as necessary to allocate whole numbers of samples to each cluster, shall be distributed approximately equally for the quarterly surveys conducted during the calendar year.

(5) *Summary survey reports.* The quarterly and annual summary survey reports required under paragraph (b)(3)(vii) of this section shall include the following information:

(i) An identification of the parties that are participating in the survey.

(ii) The identification of each sampling area included in a survey and

the dates that the samples were collected in that area.

(iii) For each retail outlet sampled:

(A) The identification of the retail outlet;

(B) The gasoline refiner or gasoline importer brand name displayed, if any;

(C) The fuel dispenser labeling (e.g., ''E15'');

(D) The sample test result for oxygenate content, and RVP result, if any;

(E) The test method used to determine oxygenate content under § 80.46(g); and

(F) The test method used to determine RVP under § 80.46(b).

(iv) Ethanol level summary statistics by brand and unbranded for each sampling area, strata, and survey series. These summary statistics shall:

(A) Include the number of samples, the average, median and range of ethanolcontent, expressed in volume percent.

(B) [Reserved].

(v) The quarterly reports required under this paragraph (b)(5) are due 60 days following the end of the quarter. The annual reports required under this paragraph (b)(5) are due 60 days following the end of the calendar year.

(vi) The reports required under this paragraph (b)(5) shall be submitted to EPA in an electronic spreadsheet.

(c) *Procedures for obtaining approval of survey plan and providing required notices.* The first year in which a survey program is conducted may consist of only a portion of a calendar year ending on December 31 (i.e., in the initial year, a survey program may begin on a date after January 1, but would still end on December 31). Subsequent survey programs shall be conducted on a calendar year basis. The procedure for obtaining EPA approval of a survey program plan under paragraph (b) or paragraph (c) of this section is as follows:

(1) For the first year in which a survey will be conducted, a survey program plan that complies with the requirements of paragraph (a) or paragraph (b) of this section must be submitted to EPA no later than 60 days prior to the date on which the survey program is to begin.

(2) For subsequent years in which a survey will be conducted, a survey program plan that complies with the requirements of paragraph (a) or paragraph (b) of this section must be submitted to EPA no later than November 1 of the year preceding the calendar year in which the survey will be conducted.

(3) The survey program plan must be signed by a responsible officer of the consortium which arranges to have an independent surveyor conduct the survey program.

(4) The survey program plan must be sent to the following address: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 6506J, Washington, DC 20460.

(5) EPA will send a letter to the party submitting the survey program plan that indicates whether EPA approves or disapproves the survey plan.

(6) The approving official for a survey plan under this section is the Director of the Compliance and Innovative Strategies Division, Office of Transportation and Air Quality.

(7) Any notifications or reports required to be submitted to EPA under this section must be directed to the official designated in paragraph (b)(6)(iv) of this section.

(d) *Independent surveyor contract.*

(1) For the first year in which a survey program will be conducted, no later than 30 days preceding the start of the survey, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(2) For subsequent years in which a survey program will be conducted, no later than December 1 of the year preceding the year in which the survey will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(3) For the first year in which a survey program will be conducted, no later than 15 days preceding the start of the survey EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if the money has been placed into an escrow account, a copy of the escrow agreement must to be sent to the official designated in paragraph (b)(6)(iv) of this section.

(4) For subsequent years in which a survey program will be conducted, no later than December 15 of the year preceding the year in which the survey will be conducted, EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (b)(6)(iv) of this section.

(e) *Consequences of failure to fulfill requirements.* A failure to fulfill or cause to be fulfilled any of the requirements of this section is a prohibited act under Clean Air Act section 211(c) and § 80.1504.

(1) EPA may revoke its approval of a survey plan under this section for cause, including, but not limited to, an EPA determination that the approved survey plan has proved to be inadequate in practice.

(2) EPA may void *ab initio* its approval of a survey plan if EPA's approval was based on false information, misleading information, or incomplete information, or if there was a failure to fulfill, or cause to be fulfilled, any of the requirements of the survey plan.

§ 80.1503 What are the product transfer document requirements for gasoline-ethanol blends, gasolines, and conventional blendstocks for oxygenate blending subject to this subpart?

(a) *Product transfer documentation for conventional blendstock for oxygenate blending, or gasoline transferred upstream of an ethanol blending facility.*

(1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion after October 31, 2011, when any person transfers custody or title to any conventional blendstock for oxygenate blending which could become conventional gasoline solely upon the addition of ethanol, or gasoline upstream of an oxygenate blending facility, as defined in § 80.2(ll), the transferor shall provide to the transferee product transfer documents which include the following information:

(i) The name and address of the transferor;

(ii) The name and address of the transferee;

(iii) The volume of conventional blendstock for oxygenate blending or gasoline being transferred;

(iv) The location of the conventional blendstock for oxygenate blending or gasoline at the time of the transfer;

(v) The date of the transfer;

(vi) For gasoline during the regulatory control periods defined in § 80.27(a)(2)(ii) or any SIP approved or promulgated under §§ 110 or 172 of the Clean Air Act:

(A) The maximum RVP, as determined by a method permitted under § 80.46(c), stated in the following format: ''The RVP of this gasoline does not exceed [fill in appropriate value]''; and

(B) For gasoline designed for the special provisions for gasoline-ethanol blends in § 80.27(d)(2), information about the ethanol content and RVP in paragraphs (a)(1) through (a)(3) of this section, with insertions as indicated:

(1) ''Suitable for the special RVP provisions for ethanol blends that contain between 9 and 10 vol % ethanol.''

(2) ''The RVP of this blendstock/gasoline for oxygenate blending does not exceed [Fill in appropriate value] psi.

(3) The use of this gasoline to manufacture a gasoline-ethanol blend containing anything other than between 9 and 10 volume percent ethanol may cause a summertime RVP violation.

(C) For gasoline not described in paragraph (a)(vi)(B) of this section, information regarding the suitable ethanol content, stated in the following format: ''Suitable for blending with ethanol at a concentration of no more than 15 vol % ethanol.''

(2) The requirements in paragraph (a)(1) do not apply to reformulated gasoline blendstock for oxygenate blending, as defined in § 80.2(kk), which are subject to the product transfer document requirements of § 80.69 and § 80.77.

(b) *Product transfer documentation for gasoline transferred downstream of an oxygenate blending facility.*

(1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion after October 31, 2011, when any person transfers custody or title to any gasoline-ethanol blend downstream of an oxygenate blending facility, as defined in § 80.2(ll), except for transfers to the ultimate consumer, the transferor shall provide to the transferee product transfer documents which include the following information:

(i) The name and address of the transferor;

(ii) The name and address of the transferee;

(iii) The volume of gasoline being transferred;

(iv) The location of the gasoline at the time of the transfer;

(v) The date of the transfer; and

(vi) One of the statements detailed in paragraph (b)(1)(vi)(A) though (E) which accurately describes the gasoline-ethanol blend. The information regarding the ethanol content of the fuel is required year-round. The information regarding the RVP of the fuel is only required for gasoline during the regulatory control periods.

(A) For gasoline containing no ethanol (E0), the following statement; ''E0: Contains no ethanol. The RVP does not exceed [fill in appropriate value] psi.''

(B) For gasoline containing less than 9.0 volume percent ethanol, the following statement: ''EX—Contains up to X% ethanol. The RVP does not exceed [fill in appropriate value] psi.'' The term X refers to the maximum volume percent ethanol present in the gasoline.

(C) For gasoline containing between 9.0 and 10.0 volume percent ethanol (E10), the following statement: ''E10: Contains between 9 and 10 vol % ethanol. The RVP does not exceed [fill in appropriate value] psi. The 1.0 psi RVP waiver applies to this gasoline. Do not mix with gasoline containing anything other than between 9 and 10 vol % ethanol.''

(D) For gasoline containing greater than 10.0 volume percent and not more than 15.0 volume percent ethanol (E15), the following statement: ''E15: Contains up to 15 vol % ethanol. The RVP does not exceed [fill in appropriate value] psi;'' or

(E) For all other gasoline that contains ethanol, the following statement: ''EXX—Contains no more than XX% ethanol,'' where XX equals the volume % ethanol.

(2) Except for transfers to truck carriers, retailers, or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraph (b)(1) of this section if such codes are clearly understood by each transferee.

(c) The records required by this section must be kept by the transferor and transferee for five (5) years from the date they were created or received by each party in the distribution system.

(d) On request by EPA, the records required by this section must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by EPA, electronic records shall be converted to paper documents.

§ 80.1504 What acts are prohibited under this subpart?

No person shall—

(a)(1) Sell, introduce, cause or permit the sale or introduction of gasoline containing greater than 10.0 volume percent ethanol (i.e., greater than E10) into any model year 2000 or older light-duty gasoline motor vehicle, any heavy-duty gasoline motor vehicle or engine, any highway or off-highway motorcycle, or any gasoline-powered nonroad engines, vehicles or equipment.

(2) Manufacture or introduce into commerce E15 in any calendar year for use in an area prior to commencement of a survey approved under 80.1502 for that area.

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, no person shall be prohibited from manufacturing, selling, introducing, or causing or allowing the sale or introduction of gasoline containing greater than 10.0 volume percent ethanol into any flex-fuel vehicle.

(b) Sell, offer for sale, dispense, or otherwise make available at a retail or wholesale purchaser-consumer facility E15 that is not correctly labeled in accordance with § 80.1501;

(c) Fail to fully or timely implement, or cause a failure to fully or timely implement, an approved survey required under § 80.1502;

(d) Fail to generate, use, transfer and maintain product transfer documents that accurately reflect the type of product, ethanol content, maximum RVP, and other information required under § 80.1503;

(e) Improperly blend, or cause the improper blending of, ethanol into conventional blendstock for oxygenate blending, gasoline or gasoline already containing ethanol, in a manner inconsistent with the information on the product transfer document under § 80.1503(a)(1)(vi) or § 80.1503(b)(1)(vi);

(f) For gasoline during the regulatory control periods, combine any gasoline or conventional blendstock for oxygenate blending intended for blending with E10 that qualifies for the 1 psi allowance under the special regulatory treatment as provided by § 80.27(d) applicable to 9–10 volume percent gasoline-ethanol blends with any gasoline or conventional blendstock for oxygenate blending intended for blending with E15, unless the resultant combination is designated, in its entirety, as an E10 blendstock for oxygenate blending.

(g) For gasoline during the regulatory control periods, combine any gasoline-ethanol blend containing E10 that qualifies for the 1 psi allowance under the special regulatory treatment as provided by § 80.27(d) applicable to 9–10 volume percent gasoline-ethanol blends, with any gasoline containing E0 or any gasoline blend containing E15.

(h) Fail to meet any other requirement of this subpart.

(i) Cause another person to commit an act in violation of paragraphs (a) through (h) of this section.

§ 80.1505 Who is liable for violations of this subpart?

(a) *Persons liable.* Any person who violates § 80.1504(a) through (i) is liable for the violation. In addition, when the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, gasoline importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer is found in violation of the prohibitions described in § 80.1504(a), and (c) through (i), the following persons shall be deemed in violation:

(1) Each gasoline refiner, gasoline importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer who owns, leases, operates, controls or supervises the facility where the violation is found.

(2) Each gasoline refiner or gasoline importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at the facility where the violation is found.

(3) Each gasoline refiner, gasoline importer, oxygenate blender, distributor, and reseller who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(4) Each carrier who dispensed, supplied, stored, or transported any gasoline which is in the storage tank containing gasoline found to be in violation, provided that EPA demonstrates, by reasonably specific showings using direct or circumstantial evidence, that the carrier caused the violation.

(b) For label violations under § 80.1504(b), only the wholesale purchaser-consumer or retailer and the branded gasoline refiner or branded gasoline importer, if any, shall be liable.

(c) Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or a facility that is owned by the joint owners, or a facility that is committed by the joint venture operation or any of the joint owners of the facility.

(d) Any parent corporation is liable for any violations of this subpart that are committed by any of its solely-owned subsidiaries.

§ 80.1506 What penalties apply under this subpart?

(a) Any person under § 80.1505 who is liable for a violation under § 80.1504 is subject to an administrative or civil penalty, as specified in sections 205 and 211(d) of the Clean Air Act, for every day of each such violation and the amount of economic benefit or savings resulting from the violation.

(b)(1) Any violation of any requirement that pertains to the ethanol content of gasoline shall constitute a separate day of violation for each and every day such gasoline giving rise to such violations remains any place in the gasoline distribution system, beginning on the day that the gasoline that violates such requirement is produced or imported and distributed and/or offered for sale, and ending on the last day that any such gasoline is offered for sale or is dispensed to any ultimate consumer for use in any motor vehicle, unless the violation is corrected by altering the properties and characteristics of the gasoline giving rise to the violations and any mixture of gasolines that contains any of the gasoline giving rise to the violations such that the gasoline or mixture of gasolines has the properties and characteristics that would have existed if the gasoline giving rise to the violations had been produced or imported in compliance with all requirements that pertain to the ethanol content of gasoline.

(2) For the purposes of this paragraph (b), the length of time the gasoline in question remained in the gasoline distribution system shall be deemed to be 25 days; unless the respective party or EPA demonstrates by reasonably specific showings, using direct or circumstantial evidence, that the gasoline giving rise to the violations remained any place in the gasoline distribution system for fewer than or more than 25 days.

(c) Any violation of any affirmative requirement or prohibition not included in paragraph (b) of this section shall constitute a separate day of violation for each and every day such affirmative requirement is not properly accomplished, and/or for each and every day the prohibited activity continues. For those violations that may be ongoing each and every day the prohibited activity continues shall constitute a separate day of violation.

§ 80.1507 What are the defenses for acts prohibited under this subpart?

(a) *Defenses for prohibited activities.*

(1) In any case in which a gasoline refiner, gasoline importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer would be in violation under § 80.1504(a), and (c) through (i) it shall be deemed not in violation if it can demonstrate:

(i) That the regulated party or its employee or agent did not commit, cause, or contribute to another person's causing the violation;

(ii) That product transfer documents account for all of the gasoline in the storage tank found in violation and indicate that the gasoline met relevant requirements; and

(iii)(A) That it has conducted a quality assurance program, including a sampling and testing program, as described in paragraph (b) of this section;

(B) A carrier may rely on the sampling and testing program carried out by another party, including the party that owns the gasoline in question, provided that the sampling and testing program is carried out properly.

(2)(i) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (a)(1) of this section, that the violation was caused by:

(A) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism;

(B) The action of any reseller, distributor, oxygenate blender, carrier, or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the gasoline refiner designed to prevent such action, and despite periodic sampling and testing by the gasoline refiner to ensure compliance with such contractual obligation; or

(C) The action of any carrier or other distributor not subject to a contract with the gasoline refiner but engaged by the gasoline refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the gasoline refiner which are reasonably calculated to prevent such action.

(ii) In this paragraph (a) of this section, to show that the violation ''was caused'' by any of the specified actions the party must demonstrate by reasonably specific showings using direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(3) For label violations under § 80.1504(b), the branded gasoline refiner or branded gasoline importer shall not be deemed liable if the requirements of paragraph (b)(4) of this section are met.

(b) *Quality assurance program.* In order to demonstrate an acceptable quality assurance program for gasoline at all points in the gasoline distribution network, other than at retail outlets and wholesale purchaser-consumer facilities, a party must present evidence of the following in addition to other regular appropriate quality assurance procedures and practices.

(1) A periodic sampling and testing program to determine if the gasoline contains applicable maximum and/or minimum volume percent of ethanol.

(2) That on each occasion when gasoline is found in noncompliance with one of the requirements referred to in paragraph (b)(1) of this section:

(i) The party immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the violating product; and

(ii) The party promptly remedies the violation (such as by removing the violating product or adding more complying product until the applicable requirements are achieved).

(3) An oversight program conducted by a carrier under paragraph (b)(1) of this section need not include periodic sampling and testing of gasoline in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of § 80.1504 relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning gasoline quality and delivery.

(4) The periodic sampling and testing program specified in paragraph (b)(1) of this section shall be deemed to have been in effect during the relevant time period for any party, including branded gasoline refiners and branded gasoline importers, if:

(i) An EPA approved survey program under § 80.1502 was in effect and was implemented fully and properly;

(ii) Any retailer at which a violation was discovered allowed survey inspectors to take samples and inspect labels; and

(iii) For truck loading terminals and truck distributors that perform oxygenate blending, additional quality assurance procedures and practices were in place, such as regular checks to reconcile volumes of ethanol in inventory and regular checks of equipment for proper ethanol blend rates.

§ 80.1508 What evidence may be used to determine compliance with the requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the requirements of this subpart pertaining to the ethanol content of gasoline shall be determined based on the ethanol level of the gasoline, measured using the methodologies specified in § 80.46(g). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the ethanol content of gasoline if the evidence or information is relevant to whether the ethanol content of gasoline would have been in compliance with the requirements of this subpart if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in § 80.46(g), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than those pertaining to the ethanol content of gasoline, and determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

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H.R. 2279/P.L. 112–21

Airport and Airway Extension Act of 2011, Part III (June 29, 2011; 125 Stat. 233)

S. 349/P.L. 112–22

To designate the facility of the United States Postal Service located at 4865 Tallmadge Road in Rootstown, Ohio, as the ''Marine Sgt. Jeremy E. Murray Post Office''. (June 29, 2011; 125 Stat. 236)

S. 655/P.L. 112–23

To designate the facility of the United States Postal Service located at 95 Dogwood Street in Cary, Mississippi, as the ''Spencer Byrd Powers, Jr. Post Office''. (June 29, 2011; 125 Stat. 237)

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