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Federal Register
Vol. 76, No. 156
Friday, August 12, 2011

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0473; Directorate Identifier 2011–NM–019–AD; Amendment 39–16774; AD 2011–17–10]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 Airplanes

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

ACTION: Final rule.

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

* * * [T]he Federal Aviation Administration (FAA) have published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, on certain aeroplanes, an interrupted shield contact may exist or develop between the housing of an in-tank Fuel Quantity Indication (FQI) cable plug and the cable shield of the shielded FQI system cables in the main and collector fuel tanks which can, under certain conditions, form a spark gap.

This condition, if not detected and corrected, may create an ignition source in the tank vapour space, possibly resulting in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

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

DATES: This AD becomes effective September 16, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 16, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 17, 2011 (76 FR 28376). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

* * * [T]he Federal Aviation Administration (FAA) have published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, on certain aeroplanes, an interrupted shield contact may exist or develop between the housing of an in-tank Fuel Quantity Indication (FQI) cable plug and the cable shield of the shielded FQI system cables in the main and collector fuel tanks which can, under certain conditions, form a spark gap.

This condition, if not detected and corrected, may create an ignition source in the tank vapour space, possibly resulting in a wing fuel tank explosion and consequent loss of the aeroplane.

For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires, for certain aeroplanes, a one-time [general visual] inspection to check for the presence of a by-pass wire between the housing of each in-tank FQI cable plug and the cable shield and, depending on findings, the installation of a by-pass wire. In addition, this AD requires the implementation of a Critical Design Configuration Control Limitations (CDCCL) task to make certain that the by-pass wire remains installed.

On later production aeroplanes, a different plug has been introduced, Souriau Part Number (P/N) 20P227–2. This plug has an improved shield connection to the housing of the plug, for which the installation of a by-pass wire is not necessary. For aeroplanes with the improved plug installed, this [EASA] AD only requires the implementation of a CDCCL task to make certain that this type of plug remains installed.

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

Comments

We received one comment. However, the commenter made no specific request regarding this AD.

Explanation of Change Made to This AD

We have revised paragraph (k) of this AD to refer to paragraph (l) of this AD.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,020, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $308, for a cost of $903 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–17–10 Fokker Services B.V.: Amendment 39–16774. Docket No. FAA–2011–0473; Directorate Identifier 2011–NM–019–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

* * * [T]he Federal Aviation Administration (FAA) have published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, on certain aeroplanes, an interrupted shield contact may exist or develop between the housing of an in-tank Fuel Quantity Indication (FQI) cable plug and the cable shield of the shielded FQI system cables in the main and collector fuel tanks which can, under certain conditions, form a spark gap.

This condition, if not detected and corrected, may create an ignition source in the tank vapour space, possibly resulting in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

Compliance

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

Inspection and Installation for Model F.28 Airplanes Serial Numbers 11003 Through 11041 and 11991 Through 11994

(g) For airplanes having serial numbers 11003 through 11041 inclusive and 11991 through 11994 inclusive: At a scheduled opening of the fuel tanks, but not later than 84 months after the effective date of this AD, do a general visual inspection for the presence of a by-pass wire between the housing of each in-tank FQI cable plug and the cable shield, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

(h) If during the general visual inspection required by paragraph (g) of this AD, it is found that a by-pass wire is not installed: Before the next flight, install the by-pass wire between the housing of the in-tank FQI cable plug and the cable shield, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

Maintenance Program Revision To Add Fuel Airworthiness Limitation for Model F.28 Airplanes Serial Numbers 11003 Through 11041 and 11991 Through 11994

(i) For airplanes having serial numbers 11003 through 11041 inclusive and 11991 through 11994 inclusive: Concurrently with paragraph (g) of this AD, revise the airplane maintenance program by incorporating CDCCL–1 specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053 Revision 1, dated September 20, 2010.

Maintenance Program Revision To Add Fuel Airworthiness Limitation for Model F.28 Airplanes Serial Numbers 11042 Through 11241

(j) For airplanes having serial numbers 11042 through 11241 inclusive: Within 3 months after the effective date of this AD, revise the airplane maintenance program by incorporating CDCCL–2 specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

No Alternative Actions, Intervals, and/or CDCCLs

(k) After accomplishing the revisions required by paragraphs (i) and (j) of this AD, no alternative actions (e.g., inspection, interval) and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

FAA AD Differences

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

Although European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0217, dated October 21, 2010, specifies both revising the maintenance program to include airworthiness limitations, and doing certain repetitive actions (*e.g.,* inspections) and/or maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions and/or maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Repetitive actions and/or maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2010–0217, dated October 21, 2010; and Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010; for related information.

Material Incorporated by Reference

(n) You must use Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

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

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

Issued in Renton, Washington, on August 3, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20361 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0305; Directorate Identifier 2010–NM–186–AD; Amendment 39–16766; AD 2011–17–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–214, –232, and –233 Airplanes

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

ACTION: Final rule.

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

* * * * *

Results from a design review done by AIRBUS for documentation update have revealed that, on post-mod 38310 A320 aeroplanes only, in case of emergency electrical configuration combined with a Green and Yellow hydraulic system loss, during landing phase (nose landing gear extended), the roll control would only be provided by the left aileron.

This condition, if not corrected, could lead to an asymmetrical landing configuration, resulting in reduced control of the aeroplane.

* * * * *

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

DATES: This AD becomes effective September 16, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 16, 2011.

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 8, 2011 (76 FR 19714). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In 2007, Airbus modification 38310 was introduced in production to simplify the ELAC2 [elevator aileron computer] and Trimmable Horizontal Stabiliser (THS) Motor 1 stand by power supply logic.

Results from a design review done by AIRBUS for documentation update have revealed that, on post-mod 38310 A320 aeroplanes only, in case of emergency electrical configuration combined with a Green and Yellow hydraulic system loss, during landing phase (nose landing gear extended), the roll control would only be provided by the left aileron.

This condition, if not corrected, could lead to an asymmetrical landing configuration, resulting in reduced control of the aeroplane.

For the reasons described above, this [EASA] AD requires a modification of the electrical installation of ELAC2 and THS Motor 1 power supply, restoring the aeroplane to the pre-mod 38310 configuration.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the NPRM

The Air Line Pilots Association, International, supported the NPRM.

Request To Change Costs of Compliance Section of the NPRM

Airbus stated that Airbus Mandatory Service Bulletin A320–27–1199, Revision 02, dated September 20, 2010, specifies that 99 airplanes are affected and that 56 total work hours are needed to do the required actions. Airbus stated that the NPRM specifies that 666 airplanes are affected and that about 35 work-hours are needed to do the actions required in the NPRM.

We infer that Airbus is requesting a change to the Cost of Compliance section of the NPRM to reduce the number of affected airplanes and to increase the estimated work-hours required to perform the actions. We agree. We have confirmed with Airbus that there are 99 Model 320–214, -232, and -233 airplanes with Airbus Modification 38310. We have revised the Costs of Compliance section of this AD to reduce the number of affected airplanes to 99. We have also revised the Costs of Compliance section of this AD to specify 56 work-hours for the required actions, as specified in Airbus Service Bulletin A320–27–1199, Revision 02, dated September 20, 2010. This estimate includes the time required for testing, accessing, and closing.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 99 products of U.S. registry. We also estimate that it will take about 56 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $3,370 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $804,870, or $8,130 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–17–02 Airbus: Amendment 39–16766. Docket No. FAA–2011–0305; Directorate Identifier 2010–NM–186–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320–214, –232, and –233 airplanes; all manufacturer serial numbers on which Airbus Modification 38310 has been accomplished in production; certificated in any category.

Subject

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

Reason

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

* * * * *

Results from a design review done by AIRBUS for documentation update have revealed that, on post-mod 38310 A320

aeroplanes only, in case of emergency electrical configuration combined with a Green and Yellow hydraulic system loss, during landing phase (nose landing gear extended), the roll control would only be provided by the left aileron.

This condition, if not corrected, could lead to an asymmetrical landing configuration, resulting in reduced control of the aeroplane.

* * * * *

Compliance

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

Actions

(g) Within 24 months after the effective date of this AD, modify the electrical installation of the elevator aileron computer and trimmable horizontal stabilizer motor 1 power supply, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–27–1199, Revision 02, dated September 20, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Modifications done before the effective date of this AD in accordance with Airbus Service Bulletin A320–27–1199, Revision 01, dated March 4, 2010, are acceptable for compliance with the requirements of paragraph (g) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0149, dated July 21, 2010; and Airbus Mandatory Service Bulletin A320–27–1199, Revision 02, dated September 20, 2010; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A320–27–1199, Revision 02, including Appendix 01, dated September 20, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on July 29, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20359 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0472; Directorate Identifier 2011–NM–005–AD; Amendment 39–16767; AD 2011–17–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 Airplanes

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

ACTION: Final rule.

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

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 Type Design in response to these regulations revealed that, under certain failure conditions, a short circuit may develop in the collector tank level float switch wiring. Such a short circuit may result in an ignition source in the tank vapour space.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

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

DATES: This AD becomes effective September 16, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 16, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 17, 2011 (76 FR 28373). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 Type Design in response to these regulations revealed that, under certain

failure conditions, a short circuit may develop in the collector tank level float switch wiring. Such a short circuit may result in an ignition source in the tank vapour space.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires the installation of a fuse packed in a jiffy junction [*i.e.,* crimped wire in-line junction device] in the collector tank level float switch wiring.

The required actions also include revising the aircraft maintenance program by incorporating critical design configuration control limitations (CDCCLs). You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 4 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $825 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,000, or $1,250 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–17–03 Fokker Services B.V.: Amendment 39–16767. Docket No. FAA–2011–0472; Directorate Identifier 2011–NM–005–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new Critical Design Configuration Control Limitations (CDCCLs). Compliance with these CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F28 Type Design in response to these regulations revealed that, under certain failure conditions, a short circuit may

develop in the collector tank level float switch wiring. Such a short circuit may result in an ignition source in the tank vapour space.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

Compliance

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

Actions

(g) Within 24 months after the effective date of this AD, install fuses packed in jiffy junctions [*i.e.,* crimped wire in-line junction device], in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010.

Maintenance Program Revision

(h) Before further flight after doing the modification required in paragraph (g) of this AD: Revise the maintenance program by incorporating the CDCCL specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010.

No Alternative Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the revision required by paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0194, dated September 29, 2010, specifies both revising the maintenance program to include limitations, and maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2010–0194, dated September 29, 2010; and Fokker Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010; for related information.

Material Incorporated by Reference

(l) You must use Fokker Service Bulletin SBF28–28–049, dated June 23, 2010, including Fokker Drawing W57273, Sheet 002, Issue C, dated June 23, 2010, Fokker Drawing W58048, Sheet 1, dated April 29, 2010, and Fokker Manual Change Notification MCNM–F28–035, dated June 23, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

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

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

Issued in Renton, Washington, on July 29, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–20168 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 239, 240, 249, 270, and 274

[Release Nos. 33–9250; 34–65052; IC–29748]

Commission Rules and Forms Related to the FASB's Accounting Standards Codification

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting technical amendments to various rules and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940. These revisions are necessary to conform those rules and forms to the FASB Accounting Standards Codification™ (''FASB Codification'').[1] The technical amendments include revision of certain rules in Regulation S–X, certain items in Regulation S–K, and various rules and forms prescribed under the Securities Act, Exchange Act and Investment Company Act.

DATES: *Effective Date:* August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Jenifer Minke-Girard, Senior Associate Chief Accountant, or Annemarie Ettinger, Senior Special Counsel, at (202) 551–5300, Office of the Chief Accountant, or Angela Crane, Associate Chief Accountant, at (202) 551–3400, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting technical amendments to each of the following provisions of

[1] ''FASB Accounting Standards Codification'' is a registered trademark of the Financial Accounting Foundation.

Regulation S–X,[2] Regulation S–K,[3] and the rules and forms under the Securities Act of 1933[4] (the ''Securities Act''), the Securities Exchange Act of 1934[5] (the ''Exchange Act''), and the Investment Company Act of 1940[6] (the ''Investment Company Act''):

- Rules 1–02, 4–01, 4–08, 4–10, and 10–01 of Regulation S–X.[7]
- Items 101, 201, 302, 303, 305, 402, 503, 601, and 1204 of Regulation S–K.[8]
- Securities Act Rule 175.[9]
- Securities Act Forms S–4 and 1–A.[10]
- Exchange Act Rules 3b–6 and 17h–1T.[11]
- Exchange Act Forms 20–F, 40–F, 8–K, and 17–H.[12]
- Investment Company Act Rule 3a–8.[13]
- Investment Company Act Forms N–1A, N–3, N–4, and N–6.[14]

I. Background

Section 108 of the Sarbanes-Oxley Act of 2002[15] (the ''Sarbanes-Oxley Act'') amended Section 19(b) of the Securities Act[16] to provide that the Commission may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard-setting body that meets specified criteria. On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (''FASB'') and its parent organization, the Financial Accounting Foundation, satisfied the criteria for an accounting standard-setting body under the Sarbanes-Oxley Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' for purposes of the Federal securities laws.[17]

On June 30, 2009, the FASB issued FASB Statement of Financial Accounting Standards No. 168, *The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162* (''Statement No. 168''), to establish the FASB Codification as the source of authoritative non-Commission accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with U.S. generally accepted accounting principles (''U.S. GAAP''). Statement No. 168 became effective for financial statements issued for interim and annual periods ending after September 15, 2009. The FASB Codification reorganizes existing U.S. accounting and reporting standards issued by the FASB and other related private-sector standard setters. All guidance contained in the FASB Codification carries an equal level of authority.[18]

The FASB Codification affects those Commission rules, regulations, releases, and staff bulletins (collectively referred to in this release as ''Commission rules and staff guidance'') that refer to specific FASB standards or other private sector standard-setter literature under U.S. GAAP, because such references are now superseded by the FASB Codification. As is discussed further below, on August 18, 2009, the Commission issued interpretive guidance[19] to avoid confusion on the part of issuers, auditors, investors, and other users of financial statements about the use of U.S. GAAP references in Commission rules and staff guidance.

II. Discussion

Many parts of Commission rules and staff guidance include direct references to specific standards under U.S. GAAP. For example, Regulation S–X—which, together with the Commission's Financial Reporting Releases, sets forth the form and content of and requirements for financial statements required to be filed with the Commission[20]—includes references to specific standards under U.S. GAAP.[21] In addition, some parts of Commission rules and staff guidance outside of the financial statement context include references to specific standards under U.S. GAAP, such as in Item 402 of Regulation S–K regarding disclosure of executive compensation.[22]

In its August 18, 2009 interpretive release, the Commission noted that given the possible confusion between Commission rules and staff guidance, on the one hand, and the FASB's Codification, on the other hand, effective immediately, references in Commission rules and staff guidance to specific standards under U.S. GAAP should be understood to mean the corresponding reference in the FASB Codification. In the August 18, 2009 release, the Commission stated that it intended to embark on a longer term rulemaking and updating initiative to revise comprehensively specific references to specific standards under U.S. GAAP in the Commission's rules and staff guidance. This release is a result of that initiative with respect to the Commission's rules and forms.[23]

Most of the technical amendments in this release result from a straightforward conversion of the prior U.S. GAAP reference to the corresponding reference in the FASB Codification. For a few specific references, the specific U.S. GAAP standard referenced in the Commission rule or form was superseded by the FASB prior to the establishment of the FASB Codification. In these instances, the particular term referenced in the Commission rule or form is no longer used in U.S. GAAP, or has a meaning different than under the prior referenced standard. In these instances, these amendments either delete the prior U.S. GAAP reference without replacement where it is no longer needed, or incorporates directly into the Commission rule or form the definition that had been used in the now-superseded standard in U.S.

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[2] 17 CFR 210.

[3] 17 CFR 229.

[4] 15 U.S.C. 77a *et seq.* Additionally, the Commission has authorized the staff to issue technical amendments to Industry Guides 3 and 7 to conform the guides to the FASB Codification. The Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel, and others preparing registration statements and reports, as well as to the Commission's staff. The Industry Guides are not rules, regulations, or statements of the Commission. The Commission has neither approved nor disapproved these interpretations. *See* Release No. 33–6384 (Mar. 16, 1982) [47 FR 11476].

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 80a–1 *et seq.*

[7] 17 CFR 210.1–02, 210.4–01, 210.4–08, 210.4–10, and 210.10–01.

[8] 17 CFR 229.101, 229.201, 229.302, 229.303, 229.305, 229.402, 229.601, and 229.1204.

[9] 17 CFR 230.175.

[10] 17 CFR 239.25 and 239.90.

[11] 17 CFR 240.3b–6 and 240.17h–1T.

[12] 17 CFR 249.220f, 249.240f, 249.308, and 249.328T.

[13] 17 CFR 270.3a–8.

[14] 17 CFR 239.15A and 274.11A; 17 CFR 239.17a and 274.11b; 17 CFR 239.17b and 274.11c; and 17 CFR 239.17c and 274.11d.

[15] 15 U.S.C. 7201 *et seq.*

[16] 15 U.S.C. 77s(b).

[17] *See* Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release No. 33–8221 (April 25, 2003) [68 FR 23333].

[18] The FASB Codification is available at *http://asc.fasb.org/home.*

[19] Release No. 33–9062A (Aug. 18, 2009) [74 FR 42772].

[20] *See* 17 CFR 210.1–01.

[21] *See, e.g.,* Rule 1–02(u) of Regulation S–X [17 CFR 210.1–02(u)], which defines the term ''related parties'' by reference to FASB Statement of Financial Accounting Standards No. 57, *Related Party Disclosures.*

[22] *See* 17 CFR 229.402.

[23] References to U.S. GAAP in Commission staff guidance in the codification of Staff Accounting Bulletins have been updated as a result of SAB No. 114 issued on March 7, 2011, available at *http://www.sec.gov/interps/account/sab114.pdf.* In addition, the Commission is adopting a technical amendment to the heading of Part 210 of the Code of Federal Regulations to remove a reference to the Public Utility Holding Company Act of 1935, which was repealed by the Energy Policy Act of 2005. Public Law 109–58 § 1263, 119 Stat. 624, 974 (2005).

GAAP, as appropriate. All of the changes are technical in nature and none of the changes are intended to represent a substantive change in the underlying rules or forms.

III. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[24] These amendments are technical changes to eliminate obsolete terminology and revise reporting and disclosure requirements as necessary to achieve consistency between the Commission's compliance requirements and the FASB Codification. Because no one is likely to want to comment on such non-substantive, technical amendments, the Commission finds that it is unnecessary to publish notice of these amendments.[25]

The Administrative Procedure Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[26] Because the amendments are non-substantive, and no affected parties would need time to learn of the changes and modify their practices, the Commission finds there is good cause for the amendments to take effect on August 12, 2011.

IV. Consideration of Competitive Effects of Amendments

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[27] Because these amendments merely make technical changes to update references to applicable paragraphs, subtopics, or topics in the FASB Codification, we do not anticipate any competitive advantages or disadvantages will be created.

V. Statutory Basis and Text of Amendments

We are adopting these technical amendments pursuant to Sections 6, 7, 10, and 19 of the Securities Act,[28] Sections 3, 10, 12, 13, 14, 15, 17, and 23 of the Exchange Act,[29] and Sections 8, 20(a), 24, 30, and 38 of the Investment Company Act.[30]

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229, 239, and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202, and 7262, unless otherwise noted.

■ 2. The part heading is revised to read as shown above.

§ 210.1–02 [Amended]

■ 3. In § 210.1–02 amend paragraph (u) by removing ''the Glossary to Statement of Financial Accounting Standards No. 57, 'Related Party Disclosures' '' and adding in its place ''the FASB ASC Master Glossary''.

§ 210.4–01 [Amended]

■ 4. In § 210.4–01:
■ a. Amend paragraph (a)(3)(i) introductory text by removing ''Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment ('Statement No. 123R')'' and adding in its place ''FASB ASC Topic 718, *Compensation—Stock Compensation''* and by removing ''Statement No. 123R'' and adding in its place ''FASB ASC Topic 718''.
■ b. Amend paragraph (a)(3)(ii) by removing ''both Statement No. 123R and Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation (October 1995),'' and adding in its place ''FASB ASC Topic 718 and prior authoritative guidance''.

§ 210.4–08 [Amended]

■ 5. In § 210.4–08:
■ a. Amend paragraph (h)(3) by removing ''Statement of Financial Accounting Standards 109, Accounting for Income Taxes'' and adding in its place ''FASB ASC Topic 740, *Income Taxes''.*
■ b. Amend Instruction 1(i) to the *Instructions to Paragraph (n)* by removing ''Financial Accounting Standards Board ('FASB'), Statement of Financial Accounting Standards No. 119, 'Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments,' ('FAS 119') paragraphs 5–7, (October 1994)'' and adding in its place ''FASB ASC Master Glossary''.
■ c. Amend Instruction 2 to the *Instructions to Paragraph (n)* by removing ''has the same meaning as defined by generally accepted accounting principles (see, *e.g.,* FAS 119, paragraph 9a (October 1994))'' and adding in its place ''means dealing and other trading activities measured at fair value with gains and losses recognized in earnings''.
■ d. Amend Instruction 3 of the *Instructions to Paragraph (n)* by removing ''(see, *e.g.,* FASB, Statement of Financial Accounting Standards No. 80, 'Accounting for Futures Contracts,' paragraph 9, (August 1984))''.

§ 210.4–10 [Amended]

■ 6. In § 210.4–10 amend paragraph (b) by removing ''Statement of Financial

[24] 5 U.S.C. 553(b).

[25] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

[26] *See* 5 U.S.C. 553(d)(3).

[27] 15 U.S.C. 78w(a)(2).

[28] 15 U.S.C. 77f, 77g, 77j, and 77s(a).

[29] 15 U.S.C. 78c, 78j, 78*l,* 78m, 78n, 78o, 78q, and 78w.

[30] 15 U.S.C. 80a–8, 80a–20, 80a–24, 80a–29, and 80a–37.

Accounting Standards No. 19, as amended'' and adding in its place ''FASB ASC Topic 932, *Extractive Activities—Oil and Gas''.*

§ 210.10–01 [Amended]

■ 7. In § 210.10–01:

■ a. Amend paragraph (a)(7) by removing ''Statement of Financial Accounting Standards No. 7, 'Accounting and Reporting by Development Stage Enterprises' '' and adding in its place ''FASB ASC Topic 915, *Development Stage Entities,''.*

■ b. Amend paragraph (b)(5) by removing ''disposed of any significant segment of its business (as defined in paragraph 13 of Accounting Principles Board Opinion No. 30)'' and adding in its place ''reported a discontinued operation (as required by FASB ASC Subtopic 205–20, *Presentation of Financial Statements—Discontinued Operations*)''.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 8. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 229.101 [Amended]

■ 9. In § 229.101 amend Instruction 2 of the *Instructions to Item 101* by removing ''SFAS No. 131'' and adding in its place ''FASB ASC Topic 280, *Segment Reporting,''.*

§ 229.201 [Amended]

■ 10. In § 229.201 amend Instruction 1 of the *Instructions to Paragraph (d)* by removing ''Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation, or any successor standard'' and adding in its place ''FASB ASC Topic 718, *Compensation—Stock Compensation,* and FASB ASC Subtopic 505–50, *Equity—Equity-Based Payments to Non-Employees''.*

§ 229.302 [Amended]

■ 11. In § 229.302:

■ a. Amend paragraph (b) by removing ''paragraphs 9–34 of Statement of Financial Accounting Standards ('SFAS') No. 69, 'Disclosures about Oil and Gas Producing Activities.' If such oil and gas producing activities are regarded as significant under one or more of the tests set forth in paragraph 8 of SFAS No. 69.'' and adding in its place ''FASB ASC Topic 932, *Extractive Activities—Oil and Gas,* if such oil and gas producing activities are regarded as significant under one or more of the tests set forth in FASB ASC Subtopic 932–235, *Extractive Activities—Oil and Gas—Notes to Financial Statements,* for 'Significant Activities.' ''.

■ b. Amend Instruction 1 of the *Instructions to paragraph (b)* by removing ''SFAS No. 69'' each time it appears and adding in its place ''FASB ASC Subtopic 932–235''.

§ 229.303 [Amended]

■ 12. In § 229.303:

■ a. Amend paragraph (a)(4)(ii)(A) by removing ''paragraph 3 of FASB Interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others (November 2002) ('FIN 45'), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FIN 45 pursuant to paragraphs 6 or 7 of that Interpretation'' and adding in its place ''FASB ASC paragraph 460–10–15–4 (Guarantees Topic), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FASB ASC paragraphs 460–10–15–7, 460–10–25–1, and 460–10–30–1''.

■ b. Amend paragraph (a)(4)(ii)(C) by removing ''FASB Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities (June 1998), pursuant to paragraph 11(a) of that Statement'' and adding in its place ''FASB ASC Topic 815, *Derivatives and Hedging,* pursuant to FASB ASC subparagraph 815–10–15–74(a)''.

■ c. Amend paragraph (a)(4)(ii)(D) by removing ''as referenced in FASB Interpretation No. 46, Consolidation of Variable Interest Entities (January 2003)'' and adding in its place ''as defined in the FASB ASC Master Glossary''.

■ d. Amend paragraph (a)(5)(ii)(A) by removing ''FASB Statement of Financial Accounting Standards No. 47 Disclosure of Long-Term Obligations (March 1981)'' and adding in its place ''FASB ASC paragraph 470–10–50–1 (Debt Topic)''.

■ e. Amend paragraph (a)(5)(ii)(B) by removing ''FASB Statement of Financial Accounting Standards No. 13 Accounting for Leases (November 1976)'' and adding in its place ''FASB ASC Topic 840, *Leases''.*

■ f. Amend paragraph (a)(5)(ii)(C) by removing ''FASB Statement of Financial Accounting Standards No. 13 Accounting for Leases (November 1976)'' and adding in its place ''FASB ASC Topic 840''.

■ g. Amend Instruction 8 of the *Instructions to paragraph 303(a)* by removing ''Statement of Financial Accounting Standards No. 89, 'Financial Reporting and Changing Prices' '' and adding in its place ''FASB ASC Topic 255, *Changing Prices,''.*

■ h. Amend Instruction 9 of the *Instructions to paragraph 303(a)* by removing ''SFAS No. 89, 'Financial Reporting and Changing Prices,' '' and adding in its place ''FASB ASC Topic 255''.

§ 229.305 [Amended]

■ 13. In § 229.305:

■ a. Amend Instruction 1.C. of the *Instructions to paragraph 305(a)* by removing ''FASB, Statement of Financial Accounting Standards No. 52, 'Foreign Currency Translation', ('FAS 52') paragraph 20 (December 1981)'' and adding in its place ''FASB ASC Master Glossary''.

■ b. Amend Instruction 2.B.vi. of the *Instructions to paragraph 305(a)* by removing ''FAS 52 paragraph 20 (December 1981)'' and adding in its place ''FASB ASC paragraph 830–20–35–3 (Foreign Currency Matters Topic)''.

■ c. Amend Instruction 2.E. of the *Instructions to paragraph 305(a)* by removing ''(see, *e.g.,* FAS 52 Appendix E for a definition of currency swap)''.

■ d. Amend Instruction 3.B. of the *Instructions to paragraph 305(a)* by removing ''FASB, Statement of Financial Accounting Standards No. 5, 'Accounting for Contingencies,' ('FAS 5') paragraph 3 (March 1975)'' and adding in its place ''FASB ASC Master Glossary''.

■ e. Amend Instruction 3.C. of the *Instructions to paragraph 305(a)* by removing ''generally AICPA, Statement of Position 94–6, 'Disclosure of Certain Significant Risks and Uncertainties,' ('SOP 94–6') at paragraph 7 (December 30, 1994)'' and adding in its place ''FASB ASC Master Glossary''.

■ f. Amend Instruction 3.E. of the *Instructions to paragraph 305(a)* by removing ''FAS 52'' and adding in its place ''FASB ASC Topic 830, *Foreign Currency Matters''.*

■ g. Amend Instruction 4.B. of the *Instructions to paragraph 305(a)* by removing ''FAS 5, paragraph 3 (March

1975)'' and adding in its place ''FASB ASC Master Glossary''.

■ h. Amend Instruction 4.C. of the *Instructions to paragraph 305(a)* by removing ''generally SOP 94–6, at paragraph 7 (December 30, 1994)'' and adding in its place ''FASB ASC Master Glossary''.

■ i. Amend Instruction 4.D. of the *Instructions to paragraph 305(a)* by removing ''FAS 52'' and adding in its place ''FASB ASC Topic 830, *Foreign Currency Matters''*.

■ j. Amend Instruction 3.A. of the *General Instructions to paragraphs 305(a) and 305(b)* by removing ''FASB, Statement of Financial Accounting Standards No. 119, 'Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments,' ('FAS 119') paragraphs 5–7 (October 1994)'' and adding in its place ''FASB ASC Master Glossary''.

■ k. Amend Instruction 3.B. of the *General Instructions to paragraphs 305(a) and 305(b)* by removing ''FASB, Statement of Financial Accounting Standards No. 107, 'Disclosures about Fair Value of Financial Instruments,' ('FAS 107') paragraphs 3 and 8 (December 1991)'' and adding in its place ''FASB ASC paragraph 825–10–50–8 (Financial Instruments Topic)''.

■ l. Amend Instruction 3.C.ii. of the *General Instructions to paragraphs 305(a) and 305(b)* by removing ''FAS 107, paragraph 8 (December 1991)'' and adding in its place ''FASB ASC paragraph 825–10–50–8''.

■ m. Amend Instruction 5.C. of the *General Instructions to paragraphs 305(a) and 305(b)* by removing ''FASB Interpretation No. 39, 'Offsetting of Amounts Related to Certain Contracts' (March 1992)'' and adding in its place ''FASB ASC Subtopic 210–20, *Balance Sheet—Offsetting''*.

■ n. Amend Instruction 5.E. of the *General Instructions to paragraphs 305(a) and 305(b)* by removing ''generally SOP 94–6, at paragraph 7 (December 30, 1994)'' and adding in its place ''FASB ASC Master Glossary''.

■ o. Amend Instruction 5.F. of the *General Instructions to paragraphs 305(a) and 305(b)* by removing ''FAS 5, paragraph 3 (March 1975)'' and adding in its place ''FASB ASC Master Glossary''.

■ p. Amend Instruction 7 of the *General Instructions to paragraphs 305(a) and 305(b)* by removing ''has the same meaning as defined by generally accepted accounting principles (see, *e.g.,* FAS 119, paragraph 9a (October 1994))'' and adding in its place ''means dealing and other trading activities measured at fair value with gains and losses recognized in earnings'', and by removing ''(see, *e.g.,* FASB, Statement of Financial Accounting Standards No. 80, 'Accounting for Futures Contracts,' paragraph 9, (August 1984))''.

§ 229.402 [Amended]

■ 14. In § 229.402:

■ a. Amend paragraph (a)(6)(iii) by removing ''Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment, as modified or supplemented ('FAS 123R')'' and adding in its place ''FASB ASC Topic 718, *Compensation—Stock Compensation''*.

■ b. Amend paragraphs (a)(6)(iv), (c)(2)(ix)(C), (d)(2)(viii), (e)(1)(iii), (k)(2)(vii)(C), (m)(5)(iv), (n)(2)(ix)(C), and (r)(2)(vii)(C) by removing ''FAS 123R'' each time it appears and adding in its place ''FASB ASC Topic 718''.

■ c. Amend the *Instruction to Item 402(k)(2)(iii) and (iv)* by removing ''FAS 123R'' and adding in its place ''FASB ASC Topic 718''.

■ d. Amend paragraph (m)(5)(iii) by removing ''Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment, as modified or supplemented ('FAS 123R')'' and adding in its place ''FASB ASC Topic 718''.

§ 229.503 [Amended]

■ 15. In § 229.503 amend paragraph 1.(C) of the *Instructions to paragraph 503(d)* by removing ''SFAS 71'' and adding in its place ''FASB ASC Topic 980, *Regulated Operations,*''.

§ 229.601 [Amended]

■ 16. In § 229.601 amend paragraph (b)(11) by removing ''on both primary and fully diluted basis'' and by removing ''even though the amounts of per share earnings on the fully diluted bases are not required to be presented in the income statement under the provisions of Accounting Principles Board Opinion No. 15. That Opinion provides that any reduction of less than 3% need not be considered as dilution (see footnote to paragraph 14 of the Opinion) and that a computation on the fully diluted basis which results in improvement of earnings per share not be taken into account (see paragraph 40 of the Opinion)'' and adding in its place ''on both a basic and diluted basis''.

§ 229.1204 [Amended]

■ 17. In § 229.1204:

■ a. Amend *Instruction 4 to Item 1204* by removing ''SFAS 69'' and adding in its place ''FASB ASC paragraph 932–235–50–24 (Extractive Activities—Oil and Gas Topic)''.

■ b. Amend *Instruction 5 to Item 1204* by removing ''SFAS 69'' and adding in its place ''FASB ASC Topic 932, *Extractive Activities—Oil and Gas''*.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1933

■ 18. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.175 [Amended]

■ 19. In § 230.175 amend paragraph (b)(2)(ii) by removing ''paragraphs 30–34 of Statement of Financial Accounting Standards No. 69'' and adding in its place ''FASB ASC paragraphs 932–235–50–29 through 932–235–50–36 (Extractive Activities—Oil and Gas Topic)''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 20. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 21. In Form S–4 (referenced in § 239.25):

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

■ a. Amend paragraph (b)(3) of Item 10 by removing ''where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated'' and adding in its place ''where a combination under common control has been consummated''.

■ b. Amend paragraph (c)(1)(iii) of Item 12 by removing ''consummation of one or more business combinations accounted for by the pooling of interest method of accounting'' and adding in its place ''combination under common control''.

■ 22. In Form 1–A (referenced in § 239.90):

Note: The text of Form 1–A does not, and this amendment will not, appear in the Code of Federal Regulations.

■ a. Amend the INSTRUCTION to the Cover Page for Offering Circular Model A by removing ''Statement of Financial

Accounting Standards No. 7 (June 1, 1975).'' and adding in its place ''the FASB ASC Master Glossary for a 'development stage entity.' ''.

■ b. Amend paragraph (4)(c)(ii) to Part F/S by removing ''pooling of interests'' and adding in its place ''combination under common control''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 23. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; 12 U.S.C. 5221(e)(3); and 7 U.S.C. 2(c)(2)(E), unless otherwise noted.

* * * * *

§ 240.3b–6 [Amended]

■ 24. In § 240.3b–6 amend paragraph (b)(2)(ii) by removing ''paragraphs 30–34 of Statement of Financial Accounting Standards No. 69'' and adding in its place ''FASB ASC paragraphs 932–235–50–29 through 932–235–50–36 (Extractive Activities—Oil and Gas Topic)''.

§ 240.17h–1T [Amended]

■ 25. In § 240.17h–1T amend paragraph (a)(1)(vii) by removing the parenthetical phrase ''(as those terms are used in Statement of Financial Accounting Standards No. 105)'' and removing ''(as that term is used in Statement of Financial Accounting Standards No. 105)'' and adding in its place ''(defined as the possibility that a loss may occur from the failure of another party to perform according to the terms of a contract)''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 26. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 27. In Form 20–F (referenced in § 249.220f):

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ a. Amend paragraph (a) of Item 5.E.2 by removing ''paragraph 3 of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November 2002) ('FIN 45'), as may be modified or supplemented, excluding the types of guarantee contracts described in paragraphs 6 and 7 of FIN 45'' and adding in its place ''FASB ASC paragraph 460–10–15–4 (Guarantees Topic), as may be modified or supplemented, excluding the types of guarantee contracts described in FASB ASC paragraphs 460–10–15–7, 460–10–25–1, and 460–10–30–1''.

■ b. Amend paragraph (d) of Item 5.E.2 by removing ''referenced in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003)'' and adding in its place ''defined in the FASB ASC Master Glossary''.

■ c. Amend Instruction 1.C. of the *Instructions to Item 11(a)* by removing ''*FASB, Statement of Financial Accounting Standards No. 52, 'Foreign Currency Translation', ('FAS 52') paragraph 20 (December 1981)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ d. Amend Instruction 2.B.vi. of the *Instructions to Item 11(a)* by removing ''*FAS 52 paragraph 20 (December 1981)''* and adding in its place ''*FASB ASC paragraph 830–20–35–3 (Foreign Currency Matters Topic)*''.

■ e. Amend Instruction 2.E. of the *Instructions to Item 11(a)* by removing ''*(see, e.g., FAS 52 Appendix E for a definition of currency swap)*''.

■ f. Amend Instruction 3.B. of the *Instructions to Item 11(a)* by removing ''*FASB, Statement of Financial Accounting Standards No. 5, 'Accounting for Contingencies, ' ('FAS 5') paragraph 3 (March 1975)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ g. Amend Instruction 3.C. of the *Instructions to Item 11(a)* by removing ''*generally AICPA, Statement of Position 946, 'Disclosure of Certain Significant Risks and Uncertainties,' ('SOP 94–6') at paragraph 7 (December 30, 1994)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ h. Amend Instruction 3.E. of the *Instructions to Item 11(a)* by removing ''*FAS 52*'' and adding in its place ''*FASB ASC Topic 830, Foreign Currency Matters*''.

■ i. Amend Instruction 4.B. of the *Instructions to Item 11(a)* by removing ''*FAS 5, paragraph 3 (March 1975)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ j. Amend Instruction 4.C. of the *Instructions to Item 11(a)* by removing ''*generally SOP 94–6, at paragraph 7 (December 30, 1994)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ k. Amend Instruction 4.D. of the *Instructions to Item 11(a)* by removing ''*FAS 52*'' and adding in its place ''*FASB ASC Topic 830, Foreign Currency Matters*''.

■ l. Amend Instruction 3.A. of the *General Instructions to Items 11(a) and 11(b)* by removing ''*FASB, Statement of Financial Accounting Standards No. 119, 'Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments,' ('FAS 119') paragraphs 5–7 (October 1994)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ m. Amend Instruction 3.B. of the *General Instructions to Items 11(a) and 11(b)* by removing ''*FASB, Statement of Financial Accounting Standards No. 107, 'Disclosures about Fair Value of Financial Instruments,' ('FAS 107') paragraphs 3 and 8 (December 1991)*'' and adding in its place ''*FASB ASC paragraph 825–10–50–8 (Financial Instruments Topic)*''.

■ n. Amend Instruction 3.C.ii. of the *General Instructions to Items 11(a) and 11(b)* by removing ''*FAS 107, paragraph 8 (December 1991)*'' and adding in its place ''*FASB ASC paragraph 825–10–50–8*''.

■ o. Amend Instruction 5.C. of the *General Instructions to Items 11(a) and 11(b)* by removing ''*FASB Interpretation No. 39, 'Offsetting of Amounts Related to Certain Contracts' (March 1992)*'' and adding in its place ''*FASB ASC Subtopic 210–20, Balance Sheet—Offsetting*''.

■ p. Amend Instruction 5.E. of the *General Instructions to Items 11(a) and 11(b)* by removing ''*generally SOP 946, at paragraph 7 (December 30, 1994)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ q. Amend Instruction 5.F. of the *General Instructions to Items 11(a) and 11(b)* by removing ''*FAS 5, paragraph 3 (March 1975)*'' and adding in its place ''*FASB ASC Master Glossary*''.

■ r. Amend Instruction 7 of the General Instructions to Items 11(a) and 11(b) by removing ''*has the same meaning as defined by generally accepted accounting principles (see, e.g., FAS 119, paragraph 9a (October 1994))*'' and adding in its place ''*means dealing and other trading activities measured at fair value with gains and losses recognized in earnings*'' and by removing ''*(see, e.g., FASB, Statement of Financial Accounting Standards No. 80, 'Accounting for Futures Contracts,' paragraph 9, (August 1984))*''.

■ s. Amend Instruction 3 of the *Instructions* to Item 17 by removing ''*SFAS No. 131*'' the first time it appears and adding in its place ''*FASB ASC Topic 280, Segment Reporting*'' and by removing ''*SFAS No. 131*'' the second time it appears and adding in its place ''*FASB ASC Topic 280*''.

■ t. Amend paragraph 2 of the *Instruction to Item 18* by removing ''FASB Statement of Accounting Standards No. 69, 'Disclosures about Oil and Gas Producing Activities,' '' and adding in its place ''FASB ASC Topic 932, *Extractive Activities—Oil and Gas,*''.

■ 28. In Form 40–F (referenced in § 249.240f):

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ a. Amend paragraph (11)(ii)(A) in General Instruction B by removing ''paragraph 3 of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November 2002) ('FIN 45'), as may be modified or supplemented, excluding the types of guarantee contracts described in paragraphs 6 and 7 of FIN 45'' and adding in its place ''FASB ASC paragraph 460–10–15–4 (Guarantees Topic), as may be modified or supplemented, excluding the types of guarantee contracts described in FASB ASC paragraphs 460–10–15–7, 460–10–25–1, and 460–10–30–1''.

■ b. Amend paragraph (11)(ii)(D) in General Instruction B by removing ''referenced in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003)'' and adding in its place ''defined in the FASB ASC Master Glossary''.

■ 29. In Form 8–K (referenced in § 249.308):

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

■ a. Amend paragraph (e) of Item 2.03 by removing ''Accounting Research Bulletin No. 43, Chapter 3A, *Working Capital''* and adding in its place ''FASB ASC paragraph 210–10–45–3 (Balance Sheet Topic)''.

■ b. Amend paragraph (c) of Item 2.04 by removing ''FASB Statement of Financial Accounting Standards No. 5 *Accounting for Contingencies* (SFAS No. 5)'' and adding in its place ''FASB ASC Section 450–20–25, *Contingencies—Loss Contingencies—Recognition,*''.

■ c. Amend Instruction 4 of Item 2.04 by removing ''SFAS No. 5'' and adding in its place ''FASB ASC Section 450–20–25''.

■ d. Amend the first paragraph of Item 2.05 by removing ''paragraph 8 of FASB Statement of Financial Accounting Standards No. 146 *Accounting for Costs Associated with Exit or Disposal Activities* (SFAS No. 146)'' and adding in its place ''FASB ASC paragraph 420–10–25–4 (Exit or Disposal Cost Obligations Topic)''.

■ e. Amend paragraph (a) of Item 4.02 by removing ''Accounting Principles Board Opinion No. 20'' and adding in its place ''FASB ASC Topic 250, *Accounting Changes and Error Corrections*''.

■ 30. In Form 17–H (referenced in § 249.328T) amend Item II.K. of Part II by removing ''as defined in Statement of Financial Accounting Standards No. 105''.

Note: The text of Form 17–H does not, and this amendment will not, appear in the Code of Federal Regulations.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 31. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

§ 270.3a–8 [Amended]

■ 32. Amend paragraph (b)(9) of § 270.3a–8 by removing ''expenses as defined in FASB Statement of Financial Accounting Standards No. 2, Accounting for Research and Development Costs'' and adding in its place ''costs as defined in FASB ASC Topic 730, *Research and Development*''.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 33. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 34. In Form N–1A (referenced in §§ 239.15A and 274.11A):

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

■ a. Amend Instruction 3(c)(ii) of the Instructions to Item 3 by removing ''Accounting Principles Board Opinion No. 30'' and adding in its place ''FASB ASC Subtopic 225–20, *Income Statement—Extraordinary and Unusual Items*''.

■ b. Amend Instruction 2(a)(ii) of the Instructions to paragraph (d)(1) of Item 27 by removing ''Accounting Principles Board Opinion No. 30'' and adding in its place ''FASB ASC Subtopic 225–20, *Income Statement—Extraordinary and Unusual Items*''.

■ 35. In Form N–3 (referenced in §§ 239.17a and 274.11b) amend Instruction 15(a) of the *General Instructions* to paragraph (a) of Item 3 by removing ''Accounting Principles Board Opinion No. 30'' and adding in its place ''FASB ASC Subtopic 225–20, *Income Statement—Extraordinary and Unusual Items*''.

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 36. In Form N–4 (referenced in §§ 239.17b and 274.11c) amend Instruction 17.(b) of the *General Instructions* to paragraph (a) of Item 3 by removing ''Accounting Principles Board Opinion No. 30'' and adding in its place ''FASB ASC Subtopic 225–20, *Income Statement—Extraordinary and Unusual Items*''.

Note: The text of Form N–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 37. In Form N–6 (referenced in §§ 239.17c and 274.11d) amend Instruction 4(c) of the *Instructions* to Item 3 by removing ''Accounting Principles Board Opinion No. 30'' and adding in its place ''FASB ASC Subtopic 225–20, *Income Statement—Extraordinary and Unusual Items*''.

Note: The text of Form N–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Dated: August 8, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20413 Filed 8–11–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0762]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Hack Freight Bridge, mile 3.1, across the Hackensack River, at Jersey City, New Jersey. The

deviation is necessary to facilitate timber replacement at the bridge. This deviation will allow the bridge owner to require a one-hour advance notice for bridge openings between 9:30 a.m. and 2:30 p.m. on seven Mondays in September and October 2011.

DATES: This deviation is effective from September 12, 2011 through October 24, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0762 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0762 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Hack Freight Bridge, across the Hackensack River at mile 3.1 has a vertical clearance in the closed position of 11 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723.

The waterway supports commercial vessels of various sizes.

The owner of the bridge, Conrail, requested a temporary deviation to facilitate timber replacement at the bridge and to allow sufficient time to clear the bridge of equipment in order to provide openings.

Under this temporary deviation the Hack Freight Bridge, mile 3.1, across the Hackensack River may require a one-hour advance notice for bridge openings between 9:30 a.m. and 2:30 p.m. on September 12, 19, and 26 and October 3, 10, 17, and 24, 2011. Mariner may provide the advance notice by calling either the number posted at the bridge or via marine radio VHF–FM Channel 13 or 16. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 2, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–20500 Filed 8–11–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0738]

Drawbridge Operation Regulation; China Basin, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Third Street Drawbridge across China Basin, mile 0.0, at San Francisco, CA. The deviation is necessary to allow the bridge to be part of the race course for the scheduled AT&T Giant Race event. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 7 a.m. to 12 p.m. on August 27, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–0738 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0738 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The City of San Francisco requested a temporary change to the operation of the Third Street Drawbridge, mile 0.0, over China Basin, at San Francisco, CA. The Third Street Drawbridge navigation span provides a vertical clearance of 7 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal if at least one hour notice is given as required by 33 CFR 117.149. Navigation on the waterway is recreational.

The drawspan will be secured in the closed-to-navigation position 7 a.m. to 12 p.m. on August 27, 2011, to allow running of the AT&T Giant Race event. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised. The drawspan can be operated upon one hour advance notice for emergencies requiring the passage of waterway traffic.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 1, 2011.

D.H. Sulouff,

Bridge Section Chief, Eleventh Coast Guard District.

[FR Doc. 2011–20503 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0671]

RIN 1625–AA00

Safety Zones; August and September Fireworks and Swimming Events in Captain of the Port Boston Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for marine events within the Captain of the Port (COTP) Boston Zone. This action is necessary to provide for the safety of life on navigable waters during the events. Entering into, transiting through, mooring or anchoring within these zones is prohibited unless authorized by the COTP Boston.

DATES: This rule is effective in the CFR from August 12, 2011 to 11:59 p.m. on September 18, 2011. This rule is effective with actual notice for the

purposes of enforcement from 9 p.m. on August 6 to 10 p.m. on September 18, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0671 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0671 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 David Labadie of the Waterways Management Division, U.S. Coast Guard Sector Boston; telephone 617–223–3010, e-mail *david.j.labadie@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters from the hazardous nature of swimming and fireworks events.

Sponsors stated they are unwilling or unable to reschedule these events because they are held in conjunction with other activities or because the events are scheduled based on favorable predicted tide and current conditions which promote the safety of participants. Rescheduling would not be a viable option because most event locations have fully booked marine event summer schedules, making rescheduling unrealistic.

The Coast Guard intends to make these safety zones permanent regulations and there is a NPRM published in the **Federal Register** requesting public comments under docket number USCG–2011–0109. Additionally, the Coast Guard has ordered safety zones or special local regulations for all of these areas for past events and has not received public comments or concerns regarding the impact to waterway traffic from those events.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Any delay in the effective date of this rule would expose spectators, vessels and other property to the hazards associated with pyrotechnics used in the fireworks displays. Delaying the effective date by first publishing a NPRM would be contrary to the rule's objectives of ensuring safety of life on the navigable waters during these scheduled events as immediate action is needed to protect persons and vessels from the hazardous nature of fireworks and swimming events.

Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

Based on the potential hazards of swim and fireworks events, the COTP Boston has determined that safety zones are necessary to protect the safety of all waterway users including event participants and spectators; this temporary rule establishes temporary safety zones for the time and location of each event.

This rule prevents vessels from entering into, transiting through, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP, or the designated representative.

Discussion of Rule

This temporary rule creates safety zones for various fireworks and swim events in the COTP Boston Zone. These events are listed below in the text of the regulation.

Because spectator vessels are expected to congregate around the location of these events, the regulated areas are needed to protect both spectators and participants from the safety hazards created by swimming events (including marine casualties and the risk of boat collisions with swimmers in the water that may cause death or serious bodily harm) and by fireworks (including obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm). During the enforcement period of the regulated areas, persons and vessels are prohibited from entering into, transiting through, anchoring or mooring within the zone unless specifically authorized by the COTP or the designated representatives. The Coast Guard may be assisted by other Federal, state and local agencies in the enforcement of these regulated areas.

The Coast Guard determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature and limited size and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas. Additionally, The Coast Guard has ordered safety zones or special local regulations for past events and has not received public comments or concerns regarding the impact to waterway traffic.

Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated areas will be of limited duration, they cover only a small portion of the navigable waterways, and the events are designed to avoid, to the extent possible, deep draft, fishing, and recreational boating traffic routes. In addition, vessels requiring entry into the area of the regulated areas may be authorized to do so by the COTP Boston.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the designated regulated area during the enforcement periods stated for each event.

The temporary safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas will be of limited size and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas. Additionally, before the effective period, the Coast Guard will issue notice of the time and location of each regulated area through a Local Notice to Mariners and Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 33 CFR 1.05–1 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0671 to read as follows:

§ 165.T01–0671 Safety Zones; August and September Fireworks and Swimming Events in Captain of the Port Boston Zone

(a) *Regulations.* The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the swimming events listed in Table 1 of § 165.T01–0671 and the fireworks events listed in Table 2 of § 165.T01–0671. These regulations will be enforced for the duration of each event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners. First Coast Guard District Local Notice to Mariners can be found at *http://www.navcen.uscg.gov/.*

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* Any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP Boston, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Boston.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas should contact the COTP Boston or the designated representative via VHF channel 16 to obtain permission to do so.

(d) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Boston or the designated representative.

(e) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) The COTP Boston or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) The regulated area for all swimming events listed in Table 1 of § 165.T01–0671 and fireworks events in Table 2 of § 165.T01–0671 is that area of navigable waters within the area described in the table as the ''Location.''

TABLE 1 OF § 165.T01–0671

1.8	August
1.8.1 Gloucester Fisherman's Triathlon	• Date: August 7, 2011. • Time: 7 a.m. to 10:30 a.m. • Location: All waters of Gloucester Harbor near Pavillion Beach within the following points (NAD 83): 42°36.6′ N, 070°40.2′ W. 42°36.6′ N, 070°40.3′ W. 42°36.5′ N, 070°40.0′ W. 42°36.5′ N, 070°39.9′ W.
1.8.2 Urban Epic Boston Triathlon	• Date: August 8, 2011. • Time: 7 a.m. to 10 a.m. • Location: All waters of Dorchester Bay near Carson Beach within the following points (NAD 83): 42°19.6′ N, 071°2.8′ W. 42°19.6′ N, 071°2.5′ W. 42°19.5′ N, 071°2.5′ W. 42°19.4′ N, 071°2.8′ W.
1.8.3 Swim and Fin Race for Salem Sound	• Date: August 27, 2011. • Time: 10 a.m. to 2 p.m. • Location: All waters of Salem Sound within the following points (NAD 83): 42°30.7′ N, 070°53.2′ W. 42°30.8′ N, 070°53.0′ W. 42°30.3′ N, 070°52.7′ W. 42°30.2′ N, 070°52.8′ W.

TABLE 2 OF § 165.T01–0671

2.8	August
2.8.1 Yankee Homecoming Fireworks	• Date: August 6, 2011. • Rain Date: August 7, 2011. • Time: 9 p.m. to 10:30 p.m.

TABLE 2 OF § 165.T01–0671—Continued

2.8	August
2.8.2 Haverhill River Ruckus Fireworks	• Location: All waters of the Merrimack River near Newburyport, MA, within a 420-foot radius of position (NAD 83): 42°49.0′ N, 070°52.7′ W. • Date: August 20, 2011. • Rain Date: August 21, 2011. • Time: 9 p.m. to 10 p.m. • Location: All waters of the Merrimack River near Haverhill, MA, within a 210-foot radius of position (NAD 83): 42°46.3′ N, 071°5.1′ W.
2.9	September
2.9.1 Federal Realty Fireworks	• Date: September 17, 2011. • Rain Date: September 18, 2011. • Time: 8:30 p.m. to 10 p.m. • Location: All waters of the Mystic River near Somerville, MA within a 280-foot radius of position (NAD 83): 42°23.9′ N, 071°4.8′ W.

Dated: August 2, 2011.

J.N. Healey,

Captain, U. S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2011–20501 Filed 8–11–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0416; FRL–9446–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions from facilities emitting 4 tons or more per year of NO_X or SO_X in the year 1990 or any subsequent year under the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on September 12, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0416 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

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

Table of Contents

I. Proposed Action

On May 27, 2011 (76 FR 30896), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	2002	Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X).	11/05/10	04/05/11

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

II. Public Comments and EPA Responses

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

III. EPA Action

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

IV. Statutory and Executive Order Reviews

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

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

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

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

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

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

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

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

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

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 18, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(388) (i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(388) * * *

(i) * * *

(A) * * *

(*4*) Rule 2002, ''Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X),'' amended November 5, 2010.

* * * * *

[FR Doc. 2011–20456 Filed 8–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[EPA–HQ–OAR–2009–0837; FRL–9450–7]

RIN 2060–AQ06

Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on corrections to the Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing final rule, which was published in the **Federal Register** of March 28, 2011 (76 FR 17288). The final rule also made a number of other changes to the regulations. After the final rule was published, it was brought to our attention that there are some incorrect and incomplete statements in the preamble, some potentially confusing statements in a paragraph of the rule text, and the title of Appendix D to Part 75 was inadvertently changed and is incorrect.

DATES: This rule is effective on October 11, 2011 without further notice, unless EPA receives adverse comments by September 12, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0837, by one of the following methods:

• *http://www.regulations.gov:* Follow the online instructions for submitting comments.

• *Mail:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

• *Hand Delivery:* Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0837. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. 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 and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: John Schakenbach, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9158, e-mail at *schakenbach.john@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/airmarkets.*

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Detailed Discussion of Rule Revisions

EPA has determined that the following corrections are needed to the March 28, 2011 final rule: (1) Two incorrect statements regarding the Louisiana DEQ's stack testing accreditation program must be removed; (2) an inadvertently-omitted reference to Question 15.5 of the ''Part 75 Emissions Monitoring Policy Manual'' must be added; (3) two inadvertent omissions in the text of § 75.4(e) must be added; (4) statements in § 75.4(e) that are apparently causing confusion among stakeholders (76 FR 17306 and 17307) must be clarified; and (5) the title of Appendix D to Part 75 must be corrected.

For several years, the Louisiana Department of Environmental Quality (DEQ) has implemented its own Louisiana Environmental Laboratory Accreditation Program (LELAP) that covers companies performing stack testing in Louisiana. Louisiana DEQ never agreed to cancel its stack testing accreditation program and replace it with accreditation to ASTM D 7036–04 or to recognize third party accreditors such as the Stack Testing Accreditation Council, as was incorrectly stated in the preamble to the March 28, 2011 final rule. Accordingly, the preamble text of the March 28, 2011 final rule (76 FR 17288) is corrected as follows:

Preamble Corrections

1. On page 17295, in the second column, the following two sentences should be removed: ''EPA notes that the Louisiana DEQ has agreed to cancel its stack testing accreditation program (see Document ID# EPA–HQ–OAR–2009–0837–0072 in the docket) and in its place substitute accreditation to ASTM D 7036–04. Louisiana DEQ also agrees to recognize third party accreditors such as the Stack Testing Accreditation Council.''

2. On page 17300, in the first column, last sentence of the Response in section C, ''Other Amendments'', paragraph 1, ''Compliance Dates for Units Adding New Stack or Control Device'', is revised to read as follows: ''Note that EPA intends to revise Questions 15.4, 15.5, 15.6, and 15.7 in the ''Part 75 Emissions Monitoring Policy Manual'' to be consistent with today's revisions to § 75.4(e).''

In the March 28, 2011 revisions to § 75.4(e)(1), oxygen (O_2) and moisture monitoring systems were inadvertently

omitted from the list of monitoring systems that require certification and/or recertification and/or diagnostic tests in certain situations. Adding O_2 and moisture systems to the list does not impose any new requirements. Sections 75.10, 75.11, 75.12, 75.20(a) and 75.20(b) already require O_2 and moisture monitoring systems to undergo certification, and/or recertification, and/or diagnostic testing in certain situations.

In the March 28, 2011 revisions to § 75.4(e)(2), NO_X concentration, O_2 concentration, and moisture data were inadvertently omitted from the list of data types that need to be monitored and reported. Adding these three types of data to the list does not introduce any new recordkeeping or reporting requirements. Sections 75.57(d) and 75.64(a)(2) already require these parameters to be continuously monitored and reported to EPA.

The March 28, 2011 revisions to § 75.4(e) set forth the allotted windows of time in which all required certification and/or recertification and/or diagnostic testing of CEM systems must be performed, when a new stack is constructed or when add-on SO_2 or NO_X emission controls are installed. Revised § 75.4(e) also provides detailed data validation rules for these events. However, stakeholders have expressed concern about a statement in § 75.4(e)(2)(iv) which appears to require that all certification tests of the low measurement scale of an SO_2 or NO_X monitor must be passed in order for readings on the certified high scale to be reported as quality-assured. This was not the Agency's intent, and today's rule makes this clear.

Today's rule further clarifies the data validation rules in § 75.4(e)(2), recognizing that in some instances, additional testing may not be required for certain previously-certified monitoring systems; these monitoring systems can continue to report quality-assured data while testing of the other systems is in progress.

Finally, the March 28, 2011 revisions of Appendix D to Part 75 inadvertently changed the title of Appendix D to: ''Appendix D to Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Peaking Units.'' Today's rule reinstates the correct title of Appendix D by removing the word ''Peaking'' from the title.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. No new recordkeeping or reporting requirements are introduced by the revisions to § 75.4(e). The Office of Management and Budget (OMB) has previously approved collection of this information for Part 75 purposes, under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* with an assigned OMB control number of 2060–0626. The OMB control numbers for EPA's regulations under Title 40 (''Protection of Environment'') are listed in 40 CFR part 9.

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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA conducted a screening analysis of today's rule on small entities in the following manner. The SBA defines small utilities as any entity and associated affiliates whose total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. The SBA 4 million megawatt hour threshold was applied to the Energy Information Administration (EIA) Annual Form EIA–923, ''Power Plant Operations Report'' 2008 net generation megawatt hour data and resulted in an estimated 1169 facilities. This finding was then paired with facility owner and associated affiliates data (owners with net generation over 4 million were disregarded), resulting in a total of 620 small entities with a 2008 average net generation of 650,169 megawatt hours. Multiplying net generation by the 2009 EIA average retail price of electricity (9.72 cents per kilowatt hour), the average revenue stream per small entity was determined to be $63,196,427 dollars. Because today's amendments to Part 75 merely clarify existing rule text and impose no new recordkeeping, monitoring, or reporting requirements, the respondent cost burden of this rule is determined to be $0.00 per year, for all of the 620 identified small entities.

After considering the economic impacts of today's rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. All of the 620 small electric utilities directly affected by this final rule are expected to experience zero costs.

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 respondent burden is estimated to be zero hours, with total annual labor and O&M costs estimated to be zero dollars. 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 rule would generally affect large electric utility or industrial companies. The amendments simply makes minor corrections and clarifications to existing sections of Part 75 and correct the title of Appendix D, and impose no new economic burden on the affected sources.

E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule simply makes minor corrections and clarifications to existing sections of Part 75 and Appendix D to part 75, which affect only the regulated sources. Thus,

Executive Order 13132 does not apply to this rule.

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

This rule simply corrects and clarifies existing rule text in part 75 and Appendix D to part 75 and imposes no new requirements. Therefore, today's rule does not have Tribal implications, and Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply.

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 rule 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 That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs 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 rulemaking simply clarifies and corrects existing rule text in Part 75 and in Appendix D to part 75, and does not involve technical standards. Therefore, the provisions of the NTTAA do not apply.

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 rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Today's rule makes minor corrections and clarifications to sections of the March 28, 2011 final rule and in Appendix D to Part 75, and imposes no new requirements.

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**. Although this action is not a ''major rule'' as defined by 5 U.S.C. 804(2), it will become effective on October 11, 2011.

List of Subjects in 40 CFR Part 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Carbon dioxide, Continuous emission monitoring, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides, Reference test methods, Incorporation by reference.

Dated: August 3, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, part 75 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k note.

■ 2. Section 75.4 is amended by revising paragraphs (e)(1) introductory text and (e)(2) to read as follows:

§ 75.4 Compliance dates.

* * * * *

(e) * * *

(1) Except as otherwise provided in paragraph (e)(3) of this section, the owner or operator shall ensure that all required certification and/or recertification and/or diagnostic tests of the monitoring systems required under this part (*i.e.,* the SO_2, NO_X, CO_2, O_2, opacity, volumetric flow rate, and moisture monitoring systems, as applicable) are completed not later than 90 unit operating days or 180 calendar days (whichever occurs first) after:

* * * * *

(2) The owner or operator shall determine and report, as applicable, SO_2 concentration, NO_X concentration, NO_X emission rate, CO_2 concentration, O_2 concentration, volumetric flow rate, and moisture data for all unit or stack operating hours after emissions first pass through the new stack or flue, or reagent is first injected into the flue gas desulfurization system or add-on NO_X emission controls, as applicable, until all required certification and/or recertification and/or diagnostic tests are successfully completed, using:

(i) Quality-assured data recorded by a previously-certified monitoring system for which the event requires no additional testing;

(ii) The applicable missing data substitution procedures under §§ 75.31 through 75.37;

(iii) The conditional data validation procedures of § 75.20(b)(3), except that conditional data validation may, if necessary, be used for the entire window of time provided under paragraph (e)(1) of this section in lieu of the periods specified in § 75.20(b)(3)(iv);

(iv) Reference methods under § 75.22(b);

(v) For the event of installation of a flue gas desulfurization system or add-on NO_X emission controls, quality-

assured data recorded on the high measurement scale of the monitor that measures the pollutant being removed by the add-on emission controls (*i.e.,* SO_2 or NO_X, as applicable), if, pursuant to section 2 of appendix A to this part, two spans and ranges are required for that monitor and if the high measurement scale of the monitor has been certified according to § 75.20(c), section 6 of appendix A to this part, and, if applicable, paragraph (e)(4)(i) of this section. Data recorded on the certified high scale that ordinarily would be required to be recorded on the low scale, pursuant to section 2.1.1.4(g) or 2.1.2.4(f) of appendix A to this part, may be reported as quality-assured for a period not to exceed 60 unit or stack operating days after the date and hour that reagent is first injected into the control device, after which one or more of the options provided in paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv) and (e)(2)(vi) of this section must be used to report SO_2 or NO_X concentration data (as applicable) for each operating hour in which these low emissions occur, until certification testing of the low scale of the monitor is successfully completed; or

(vi) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

* * * * *

■ 3. Appendix D to part 75 is amended by revising the heading to read as follows:

Appendix D to Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units

* * * * *

[FR Doc. 2011–20451 Filed 8–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9451–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Pasley Solvents & Chemicals, Inc. Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is publishing a direct final Notice of Deletion of the Pasley Solvents & Chemicals, Inc Superfund Site (Site), located in the Town of Hempstead, Nassau County, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 26, 2011 unless EPA receives adverse comments by September 12, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: henry.sherrel@epa.gov.*
- *Fax:* To the attention of Sherrel Henry at 212–637–3966.
- *Mail:* Sherrel Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.
- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866.

Phone: 212–637–4308.

Hours: Monday to Friday from 9 a.m. to 5 a.m.

Information for the Site is also available for viewing at the Site Administrative Record Repositories located at: Levittown Library, 1 Bluegrass Lane, Levittown, New York 11756. Tel. (516)731–5728.

Hours: Monday through Friday: 9 a.m. through 9 p.m., Saturday: 9 a.m. through 5 p.m.

FOR FURTHER INFORMATION CONTACT: Sherrel D. Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866, (212) 637–4273, by e-mail at *henry.sherrel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 2 is publishing this direct final Notice of Deletion of the Pasley Solvents & Chemicals, Inc Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 26, 2011 unless EPA receives adverse comments by September 12, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Pasley Solvents & Chemicals, Inc Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the NYSDEC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *Anton News* (*Three Village Times* and the *Floral Park Dispatch*). The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Site, EPA ID No. NYD991292004, is located in the Town of Hempstead in Nassau County, New York. The Site property measures 75 feet by 275 feet with a fenced boundary on the north, east and south sides and is located at 565 Commercial Avenue, Town of Hempstead, Nassau County, New York. The Site lies between the borders of the political subdivisions of the Village of Garden City and Uniondale, in the Town of Hempstead. A building and loading platform form the western boundary of the Site at the adjacent property.

From 1969 until 1982, the Site was occupied by the Pasley Solvents and Chemicals Company (Pasley) and was used as a chemical distribution facility. Activities at the Site included delivery and storage of chemicals in tanks on-site, and transfer of the chemicals to 55-gallon drums for delivery to customers. Some customers reportedly returned used chemicals and empty drums to the Site. These chemicals included a wide range of aromatics and halogenated aliphatic hydrocarbons, solvents, ketones and alcohols. Commander Oil Corporation (Commander) owned the Site prior to 1969 when the Site was used by Commander for distribution of fuel oils.

In 1980, Pasley applied for a New York State Department of Environmental Conservation (NYSDEC) permit to store and remove chemicals. The Nassau County Department of Health (NCDOH) collected soil samples from the Site. Analyses of the samples indicated that the soils were contaminated with volatile organic compounds (VOCs). In 1980, NCDOH referred the Site to NYSDEC and both agencies recommended that Pasley submit a plan for a remedial investigation and cleanup. In 1981, Lakeland Engineering performed a limited well drilling and ground water sampling program. Five on-property and one off-property monitoring ground water wells were installed and ground water samples were collected by Lakeland and the New York State Department of Health (NYSDOH).

Contaminants were detected above State drinking water standards.

The Site was proposed to the NPL in October 1984 (49 FR 40320) and was listed on the NPL in June 1986 (51 FR 21054).

After all remedial action at the site was completed; Plato Holding LLC bought the property from Commander in August 2003 and concluded negotiations with the Metropolitan Transit Authority (MTA) to utilize the Site as a police station. In 2004, the Site was paved and an office trailer was placed on concrete blocks. Plato Holding sold the property to Yonah Reality in March 2007. It is Yonah Reality's intent to continue to use the property as a police station.

Remedial Investigation and Feasibility Study (RI/FS)

On August 19, 1988, EPA and Commander entered into an Administrative Order on Consent, Index NO. II–CERCLA–80212 (the Order). The Order required Commander to perform a Remedial Investigation/Feasibility Study (RI/FS) to determine the nature and extent of contamination at the Site, to develop and analyze cleanup alternatives and to remove the 12 above-ground storage tanks located on the Site. In November of 1988, Commander completed the tank removal. The RI was performed by Metcalf and Eddy, Inc. for Commander in 1990. During the RI subsurface soil samples, ground water samples and surface soil samples were collected and analyzed. As part of the ground water investigation eighteen ground water monitoring wells were installed. The monitoring wells were clustered in six locations (three wells each, screened at depths of 30, 60, and 90 feet). The ground water quality of the aquifer underlying the Site, downgradient and upgradient of the Site was assessed by two rounds of water quality sampling in 1990 and a third round of partial sampling in 1991. The most prevalent VOC detected in ground water during the RI was trans—1,2-dichloroethene at a maximum concentration of 37,000 parts per billion (ppb). Samples collected from upgradient off-site monitoring wells showed a maximum level of 27 ppb of tetrachloroethene (PCE) (monitoring well location MW–1S) and 15 ppb for trichloroethene (TCE) (monitoring well location MW–1D). Benzene was also detected at a maximum level of 38 ppb (monitoring well location MW–1l). Since a contaminant plume could not be defined by plotting the Total Volatile Organic Compounds (TVOCs) associated with the Site study area, a group of VOCs which were found at the Site but which were not detected in upgradient well cluster well MW–1 were chosen to define the plume associated with the Site (identified as Site Index Compounds (SICs)). Through the use of the index compounds, a well defined contaminant plume could be identified for the Site.

The SICs chosen to define the plume for the Site are the following: chloroform, 1,1dichloroethene, 1,1-dichloroethane, trans-1,2-dichloroethene, 1,1,1-trichloroethane, ethylbenzene, toluene, chlorobenzene, and xylene. The SICs were found to contribute a major part (99%) of the contamination found in the monitoring well cluster located on-site (MW–2). Non-site index compounds acetone, benzene, TCE and PCE, which were found in on-property wells and upgradient were also monitored. However, the use of SICs does not imply that non-index compounds are absent from the Site.

The SIC plume for the 20 to 30-foot depth Upper Glacial aquifer extended approximately 400 feet to the southwest, parallel to the ground water flow direction and the contaminant plume was approximately 390 feet wide. The maximum level of SIC contamination detected was 37,000 parts per billion (ppb) for trans-1,2-dichloroethene, 7400 times the Federal Maximum Contaminant Level (MCL) of 5 ppb. TCE, although not part of the SIC plume, was also detected at a maximum concentration of 320 ppb, 64 times its MCL of 5 ppb. The SIC plume for the 50 to 60 foot depth in the Lower Glacial aquifer was found to be much smaller, and centered on MW–4I, directly downgradient of the Site. The maximum level of SIC contamination in this portion of the plume was 15 ppb for trans-1,2-dichloroethene. TCE was also detected at 15 ppb. No SIC contamination was found directly downgradient or on-site in the 80 to 90 foot depth in the Upper Magothy aquifer.

Fifty (50) surface soil grab samples were collected and analyzed for VOCs. These samples were collected from an approximate 30-foot grid pattern at a depth of 6 to 12 inches below grade. Samples were then collected and composited for metals and semi-volatile organic analyses. Each composite sample consisted of soil from five adjacent discrete sample locations.

Data from the surface soil samples revealed elevated levels of VOCs originating from three primary locations. The concentrations of TVOCs, primarily PCE and trans-1,2-dichloroethene, were detected in concentrations of 1,000 ppb up to concentrations of 603,000 ppb. Additionally, total semi-volatile organic compounds were detected in composite samples collected from ten locations. The highest concentrations of total semi-volatiles were detected in composite samples 8 and 9 (204,000 ppb and 126,500 ppb, respectively) collected on the eastern edge of the Site.

Subsurface samples were also collected from eight locations on-site and five locations off-site. On-site, two samples were collected from each of eight borings at depths of 12 to 14 feet and 23 to 25 feet (or the first two feet below the water table). A total of sixteen samples were collected. Elevated levels of total VOCs (greater than 1,000 ppb) were detected in six of the sixteen samples.

Based on the results of the RI report, a risk assessment was performed for the Site. The risk assessment determined that although the risk posed by the soils are within EPA's acceptable risk criteria, contaminants in the soils, if not addressed, would continue to contribute to further contamination of the ground water, resulting in a potential future risk from ground water ingestion.

A FS was then completed to identify and evaluate remedial alternatives that would be effective and implementable in addressing the contamination, based on site-specific conditions. The FS Report was developed based on the ''Guidance for conducting Remedial Investigation and Feasibility Studies under CERCLA.'' Remedial alternatives were developed to satisfy the following Remedial Action Objectives (RAOs) for the Site:

- The soils will be treated until the soil cleanup objectives are met or until no more VOCs can be effectively removed from the unsaturated zone.
- Contaminated groundwater will be treated to meet either Federal or state groundwater standards except in those cases where upgradient concentrations are above such standards.

Selected Remedy

Based upon the results of the RI/FS, on April 24, 1992, a Record of Decision (ROD) was signed, selecting a remedy for the Site. The major components of the 1992 ROD included the following:

- Treatment of approximately thirteen thousand (13,000) cubic yards of contaminated soil by soil vacuuming (also referred to as soil vapor extraction), and/or by soil flushing;
- Disposal of treatment residuals at a RCRA Subtitle C facility;
- Remediation of the ground water by extraction/metals precipitation/air stripping with vapor phase granular activated carbon (GAC) polishing;

• Pumping of contaminated ground water from three extraction wells at a combined flow rate of approximately 450 gallons per minute;

• Implementation of a long-term monitoring program to track the migration and concentrations of the contaminants of concern; and

• Implementation of a monitoring program that would include the collection and analysis of the influent and effluent from the treatment systems.

After the ROD was issued, EPA sent notice letters and a draft Consent Decree (CD) to Commander and to the operators of the Site (Robert Pasley and Pasley Solvents and Chemicals Company) for implementation of the remedy selected in the ROD. These parties declined to perform the selected remedial action. Counsel for Commander contended that Commander was not financially able to implement the remedy which was estimated to cost 14 million dollars. As a result, in 1993 EPA obligated Superfund monies for performance of the remedial design (RD) by Ebasco Services, Inc., an EPA contractor.

Subsequently, Commander notified EPA that it believed that an innovative technology, air sparging modification to the ground water remedy would be an effective means to remediate the ground water, at approximately half the cost of the selected remedy. EPA evaluated all available information on the air sparging technology and gave approval for Commander to submit a work plan to conduct a pilot study to evaluate the effectiveness of air sparging at the Site. The results of the pilot study, which were documented in the Air Sparging (AS)/Soil Vapor Extraction (SVE) Pilot Test Study Report, demonstrated that air sparging would be an effective means of remediating the ground water at the Site.

As a result, EPA determined that AS was a viable technology in combination with SVE to clean up the ground water and soils at the Site and subsequently on May 22, 1995, EPA issued a ROD Amendment selecting the following remedy:

• Remediation of the ground water by AS in the contaminated saturated zone underlying the property;

• Remediation of the on-property unsaturated zone soils and collection of AS vapors by SVE;

• Interception and remediation of the off-property ground-water plume by AS accompanied by SVE in the area of Cluster Park, a local park located near the facility;

• Implementation of a long-term ground-water monitoring program to track the migration and concentrations of the contaminants of concern; and

• Implementation of a remediation system monitoring program that would include vapor monitoring, ground-water monitoring and soil sampling.

The ROD and ROD Amendment were intended to remediate the soil so that the Site property, which does not currently have permanent structures present, could be used without restriction. Therefore, no Institutional Controls (ICs) were required for the selected remedy at the Site.

Response Actions

In 1995, EPA concluded CD negotiations with the PRPs related to the performance of the remedial design, remedial construction, operation, maintenance, and monitoring of the remedy selected in the ROD Amendment. On January 26, 1996, the CD was entered in United States District Court (approved by the Judge) for the Eastern District of New York.

CRA Services was selected by Commander to design, construct, and operate the remedial system. EPA approved the RD in April 1997. Construction of the remedy started on June 26, 1997 and was completed on October 21, 1997. Construction activities are summarized in the Remedial Action Report, dated July 14, 1998. The Remedial Action Report documented that the work was performed in accordance with the approved design, consistent with the decision documents and that appropriate construction standards and QA/QC procedures were used.

The remediation system consisted of two SVE/AS systems: One on the Pasley property; and one off the Pasley property in Cluster Park. The system worked by introducing air into the aquifer to volatilize organic compounds and capture the organic vapors. The vapors from the on-property system were treated with GAC, prior to discharge. Rotary-vane AS compressors and rotary-lobe SVE blowers, housed in the on-property treatment building, were used to ''push'' and ''pull'' the air and soil vapor from both systems.

Major components of the constructed remedy include:

On-Property

• 19 AS wells, 2-inch polyvinyl chloride (PVC), screened 50–52-feet below ground surface (bgs)

• Eight shallow SVE wells, 2-inch PVC, screened 5–10 feet bgs

• Eight deep SVE wells, 4-inch PVC, screened 15–20 feet bgs

• Five monitoring well clusters

• Buried piping to each AS/SVE well

• 24 x 24-ft treatment building

• AS and SVE blowers, piping and controls

• GAC vapor treatment system

• Condensate collection and GAC treatment system

• Re-infiltration gallery

• Off-property AS and SVE blowers, piping, controls

Off-Property

• Fifteen AS wells, 2-inch PVC, screened 50–52 feet bgs

• Five SVE wells, 2-inch PVC, screened 15–20 feet bgs

• Six monitoring well clusters

• Buried piping to each AS/SVE well

• Buried distribution vault and controls

The AS/SVE system operated from October 1997 to October 2002. The system was shut down when monitoring data indicated that groundwater and soil cleanup levels specified in the 1995 ROD had been met. The Notice of Completion and Final Operation and Maintenance (O&M) Report were submitted by Commander in 2003. In January 2004, post remediation monitoring began to ensure site related contamination had been effectively remediated.

Cleanup Goals

Consistent with the ROD and ROD Amendment, the site-specific ground water and soil cleanup goals are summarized in Table 1 below.

TABLE 1

Contaminant	Groundwater cleanup goal (µg/L) [1]	Recommended soil cleanup goals (ppm) [2]
Chloroform	7	0.3
1,1-Dichloroethene	5	0.4
1,1-Dichloroethane	5	0.2

TABLE 1—Continued

Contaminant	Groundwater cleanup goal (µg/L) [1]	Recommended soil cleanup goals (ppm) [2]
Trans-1,2-Dichloroethene	5	0.3
1,1,1-Trichloroethane	5	0.8
Ethylbenzene	5	5.5
Toluene	5	1.5
Chlorobenzene	5	1.7
Xylene	5	1.2
Acetone	50	0.2
Benzene	0.7	0.06
Tetrachloroethene	5	1.4
Trichloroethene	5	0.7
VOCs (total)	N/A	10

[1] Maximum Contaminants Levels (MCLs).
[2] NYSDEC Technical and Administrative Guidance Memorandum (TAGM) 446: Determination of Soil Cleanup Objective and Cleanup Levels, Rev Jan 1994.

As stated in the RAO described above, contaminated groundwater was treated to meet either Federal or state groundwater standards (MCLs) except in those cases where upgradient concentrations are above such standards. The upgradient groundwater contaminants are acetone, TCE, benzene and PCE.

Soils

When the concentrations of vapors appeared to be stabilizing, soil sampling was conducted to assess remedial progress. The soil sampling was completed in July 2000. A total of 12 soil borings were taken at the Site. It should be noted that sampling took into account the three primary locations of elevated concentration identified in the RI. The samples submitted for analysis were taken from the interval with the highest detected concentration of VOCs (measured by a photo ionization detector (PID)) in each boring. The results indicated that an area near MW–2S (BH–12 area) required additional treatment. Contingency measures were implemented in order to decrease the concentrations of SICs (specifically xylene) below cleanup levels. Contingency measures included shutting off the east side air sparging wells and diverting air to the area around MW–2S. In addition, inorganic nutrients in the form of a commercial garden fertilizer (Miracid 30:10:10) were added to the west side well in an attempt to accelerate biological activity for further chemical reduction, and two more AS wells were installed in the area.

In April 2003, when system monitoring no longer detected VOCs in the west side wells, soil sampling was again conducted. This effort was focused in the area near MW–2S. The results showed concentrations below the cleanup objectives.

Groundwater

Four on-site ground water monitoring wells and seven down gradient monitoring wells were monitored over the 5-year SVE/AS operation period (from 1997 to 2002). A total of 19 rounds of ground water samples were taken during that period. Samples were analyzed for SICs as described above. In addition to the SICs, acetone, TCE, benzene and PCE were included in each analysis because they were also detected on-site. Collectively the SICs and these four other compounds were described as the total volatile organic index compounds (TVOICs). The use of SICs and TVOICs provided a means of ensuring that site related contamination was monitored and provided the ability to differentiate site related contamination from those up gradient contaminants believed to be moving through the site. Ground water monitoring was performed prior to the start of operation of the treatment system, during operation of the system and again during the Post Remediation Monitoring (PRM) phase. During each phase, the number of wells monitored and frequency of monitoring varied per the monitoring plans.

The soils at the Site were identified as a source of contamination to the ground water. Specific cleanup levels in soils were specified in the ROD Amendment. The remedial action objectives specified in the ROD were met as demonstrated in soil sample results taken in July 2000 and April 2003.

In order to demonstrate restoration of groundwater and soil contamination in the source area for site-related contamination, it was assumed that if SVE/AS effectively removed all source material, then concentrations down gradient of the first line of sparge wells would have similar concentrations of SICs and TVOICs during remediation and during PRM because all VOC contamination (both SIC and TVOICs) in the saturated zone would be addressed by the system. To evaluate this assumption, results from ground water monitoring wells in this area (MW–9724 and MW–9725), were compared based on concentrations of SICs and TVOICs over time.

As shown in Table 2 below, monitoring wells, MW–9724 and MW–9725 had comparable concentrations of SICs and TVOICs from February 2000 through May 2002 during active SVE/AS operation. Over this time, well MW–9724 had concentration of SICs in 2/2000 of 197 ppb and concentrations of TVOICs of 205 ppb. Samples taken in 5/2002 showed declines from the concentrations in 2/2000 to 0 ppb SICs and 1 ppb TVOIC. Further support is provided from evaluation of the data from well MW–9725 where the concentrations in 2/2000 of SIC were 356 ppb and the concentrations of TVOIC were 360 ppb. Declines were found in 5/2002 where the concentration of SIC was 9 ppb and for TVOIC was 10 ppb.

TABLE 2—COMPARISON OF WELL MW–9724 AND MW–9725 DATA TO DEMONSTRATE CONSISTENCY IN CONCENTRATIONS BETWEEN SICS AND TVOIC

Time line	MW–9724 SIC concentrations	MW–9724 TVOIC concentrations	MW–9725 SIC concentrations	MW–9725 TVOIC concentrations
02/2000	197 ppb	205 ppb	356 ppb	360 ppb.
06/2001	7 ppb	12 ppb	107 ppb	109 ppb.
05/2002	0 ppb	1 ppb	9 ppb	10 ppb.

These results demonstrate that any source material in the saturated zone was addressed for both SICs and any site related TVOICs during system operation. This is further supported by the fact that confirmatory sampling of on-site soils showed that all contaminants had achieves the cleanup objectives specified in the ROD and ROD amendment.

Next, in order to verify the ROD Assumptions that upgradient contamination (particularly TCE and PCE) were present at the Site, pre-ROD, during the Remedial Action (RA), and Post RA, groundwater monitoring results during these three phases were reviewed and evaluated.

Pre-ROD Determination. The RI/FS documented TCE and PCE at concentrations of 15 ppb and 27 ppb, respectively in an upgradient well (MW–1). The levels of TCE and PCE fluctuated during the RI/FS. Sample results from other on-site wells indicated concentrations lower than those found in the upgradient well. Based on this finding, further investigations were conducted at other locations within this area (outside of the site boundaries, as defined) as described below.

The Roosevelt Field, a former airfield that is now a large shopping mall located approximately 2000 feet north of the Pasley site, was identified as a potential source of PCE and TCE at the Pasley site during the RI/FS. Investigations performed at the Roosevelt field site identified three volatile organic ground water contamination plumes of TCE and PCE. Two of the contamination plumes exist in the Upper Glacial aquifer, and the third is present in both the Upper Glacial aquifer and the Magothy Formation. The Upper Glacial aquifer plumes are at depths similar to the Pasley SIC plume. These plumes were reported in 1986 to extend at least 1,000 feet to the south southwest of Roosevelt Field, and within 400 feet of the Pasley Site. Specifically, the 1992 ROD Declaration of Statutory Determinations section stated that ''Due to the existence of an upgradient source of contamination, the selected ground water remedy, by itself, will not meet chemical-specific ARARs nor be capable of restoring the area ground water to applicable ground water quality standards until these upgradient source areas are removed''.

During RA. Groundwater monitoring was conducted over the five year SVE/AS operation period at the Pasley site. The results of ground water monitoring during this period demonstrate the ROD assumption that up gradient contamination (particularly TCE and PCE) were present during RA. During the RA, MW–1I upgradient of the Site showed consistent elevated TVOIC concentrations. Between 1998 and 2001, TVOIC concentrations ranged from 9 to 204 ppb. SIC concentrations ranged from 2 to 32 ppb. Therefore, throughout the period of operation, TVOIC concentrations accounted for a majority of the contamination found during monitoring events. The consistently low presence of SICs indicate that site-related contamination did not impact this well. These results conclude that directly upgradient of the remediation system, VOC contamination was consistently flowing underneath the source area being remediated.

Prior to remediation the SICs represented 99% of the TVOICs present in MW–2S located on the western edge of the source area. Results for 13 of the next 15 sampling events (up until the 2002 sampling event) similarly showed the percentage of SICs as greater than 90% of the TVOICs present. These results contrasted significantly from those for the upgradient well MW–1I where the SICs represented less than 10% of the TVOICs in 6 of 8 sampling events clearly indicating that there was an upgradient source of non-site index compounds. However, by the time the remediation was complete, the percentage of SICs present in MW–2S was similar to that typically present in MW–1I (*i.e.,* less than 10%) as the SICs concentration was reduced to 2 ppb and the TVOICs were present at 22 ppb. This data also indicates, at the end of remediation, even though SIC had been addressed, levels of other VOCs continued to be present. This data concludes that VOCs that were not site-related continued to impact the groundwater being remediated. See Table 3, below.

TABLE 3—COMPARISON OF SIC AND TVOIC CONCENTRATION BETWEEN ON-SITE GROUNDWATER MONITORING WELL MW–2S [3] AND UPGRADIENT WELL MW–1I

Time Line	On-site wells		Upgradient wells	
	MW–2S SIC concentrations (ppb)	Total MW–2S TVOIC concentrations (ppb)	MW–1I SIC concentrations (ppb)	MW–1I TVOIC concentrations (ppb)
1997—Prior to Start of RA	6914	7013	NA	NA
8/1998	1013	1046	2	101
8/2000	890	937	9	178
6/2001	328	335	8	183
5/2002	88	288	NA	NA
1/2004	2	22	.....	.....
8/2005 [4]	7	32	NA	NA

[3] MW–2S—most contaminated on site ground water monitoring well.

[4] Toluene was detected at elevated concentrations in all samples collected but was found to be a laboratory contaminant; therefore the values were not included.

The monitoring data for off-property monitoring wells also demonstrate the success of the remedy. Seven off-property wells, located approximately 400 feet down gradient of the Site, were monitored over the five-year O&M period. As described in the Remedial System Overview (above), four off-site monitoring wells (MW–9721, MW–9724, MW–9725, and MW–4S) were located upgradient of the SVE/AS off-site system. The three remaining wells (MW–9720, MW–9722, and MW–9723) were located downgradient of the SVE/AS off-site system.

Upgradient wells MW–9724, MW–9725, and MW–4S had levels of SICs and TVOICs that were elevated during the first three years of O&M. These elevated levels for both SICs and TVOICs were reduced once contaminant levels on-property were reduced by the on-site treatment efforts indicating that the system effectively addressed all VOC contamination within the treatment zone. In addition, the declining SIC concentrations indicate that no additional on-site source material in the saturated zone is contributing to the groundwater contamination downgradient of the source area SVE/AS system. Once remediation started, no SICs or TVOIC contamination was detected in monitoring wells down gradient of the off-site SVE/AS system (MW–9722 or MW–9723).

Two monitoring wells (MW–9720 and MW–9721) were located downgradient of the treatment systems but were located hydraulically sidegradient of the treatment area. It was assumed, if groundwater flowing on site was affected by upgradient sources, these wells would show fluctuating levels of TVOIC concentration but would not have SIC concentrations above cleanup levels. MW–9720 showed a fluctuation in TVOIC and no SICs readings throughout the entire 5 year operations monitoring period. In addition, monitoring well MW–9721 also showed consistent fluctuation in the TVOIC numbers and limited SICs numbers. The fluctuation in the TVOIC and the lack of SICs in monitoring wells (MW–9720 and MW–9721) indicate that the contamination detected was not originating from the Site.

These results indicate that the treatment system was effectively treating the contamination originating from the Site by the reduction of SIC concentration in the onsite monitoring well MW–2S and the downgradient monitoring wells (MW–9724, MW–9725, MW–4S, MW–9722 and MW–9723) to the cleanup levels indicated in the ROD. Finally, data from MW–2S in the source area, upgradient well MW–1I, and downgradient/sidegradient wells MW–9720 and MW–9721, show persistent TVOIC concentrations in both on-site, upgradient, and sidegradient wells during the operation period supporting the ROD assumption that PCE and TCE contamination were coming on site from upgradient sources.

During PRM. Prior to the start of the post remediation monitoring, the upgradient monitoring well (MW–1) located on private property was destroyed and could not be sampled. During PRM only one on-site monitoring well (MW–2S) and three downgradient monitoring wells (MW–9720, MW–9722, and MW–9723) were monitored. When evaluating the PRM data, it is important to note that the 2/9/2005 sampling event is an anomaly of high concentrations due to laboratory contamination. These results were not evaluated in this analysis.

During the first two PRM sampling rounds (January and July 2004), the analytical results for samples collected from MW–2S indicated that TCE and PCE and all SICs were at or below MCLs. However, in the next three sampling events in 2005, the concentrations of PCE increased above MCLs going to 22 ppb to 170 ppb and then dropping down to an average concentration of 35 ppb in the last round of sampling in the summer of 2005. During those same sampling events, TCE concentrations were 4 ppb, 58 ppb and then an average of 9 ppb in the last round of sampling. It is believed that this spike and then steady decline in concentrations is attributable to an up gradient source. Similar slugs of contamination have been seen moving through other locations used for monitoring the Upper Glacial aquifer on Long Island; these observations are not surprising given the fact that the groundwater generally moves greater than 1 foot a day in this aquifer.

During the PRM sampling rounds, downgradient wells showed limited TVOIC contamination. All three wells showed no rebound in SIC. TVOIC contamination in MW–9722 fluctuated during this two year sampling period. The PRM phase monitoring confirmed that all site-related contamination in soils and groundwater had been remediated to cleanup levels specified in the ROD expect for those VOCs which were coming on site from off-site sources.

Conclusion. EPA believes that Site related contamination was remediated to ground water restoration standards. The objectives of the 1992 ROD, as modified by the 1995 ROD Amendment, were to address the source of contamination at the Site, the contamination in the surface soils, and ground water contamination attributable to the Pasley Site. By treating the VOC-contaminated soils and ground water by means of SVE/AS, the Pasley Site contaminants were adequately addressed by the remedial actions to cleanup levels specified in the ROD. Although ground water sampling data indicate regional contamination as evidenced by persistent PCE and TCE contamination in wells upgradient and sidegradient of the SVE/AS system before, during and after operation, the objectives of the ROD and the ROD Amendment were met.

Operation and Maintenance

The O&M Manual was approved by EPA in November 1997. The O&M manual documented the information and procedures necessary to allow for effective and efficient operation of the remedial system constructed at the Site. In accordance with the CD and the O&M Manual, the O&M period was to be performed for a minimum of five years to be followed by a PRM period. O&M activities were initiated in November 1997. During the operation of the AS/SVE system, the vapor from each of sixteen on-property and five off-property extraction wells were monitored on a monthly basis. Air discharge, prior to carbon treatment, from the SVE system was monitored on a monthly basis in order to demonstrate the effectiveness of the SVE system to remove VOCs from soil. Ground water monitoring wells were sampled quarterly from November 1997 through October 2000 and semi-annually from November 2000 through March 2003.

The Notice of Completion and Final O&M Report were submitted by Commander in 2003. The report indicated that SICs have met the cleanup standards in ground water and all COCs have met the cleanup standards in soil as specified in the ROD and ROD Amendment. Accordingly, EPA determined that the operation and maintenance was complete, and the Site could progress to the PRM phase. The PRM phase monitoring confirmed that all site-related contamination in soils

and ground water had been remediated to cleanup levels specified in the ROD expect for those VOCs which were coming on site from off-site sources. Confirmatory sampling has indicated that all site related contaminants have been remediated to cleanup levels that allow for unlimited use and unrestricted exposure, therefore, no CERCLA O&M activities are necessary.

Five-Year Review

The first five-year review for the Site was completed on August 5, 2004, pursuant to OSWER Directive 9355.7–03B–P. That review, conducted after the RA had been completed and O&M, and monitoring activities had commenced, determined that the RA as designed and constructed pursuant to the ROD Amendment, was performing satisfactorily and that the remedy implemented was protective of human health and the environment. A second five-year review for the Site was completed on July 23, 2009. That review, conducted after the RA and all O&M and Post Remediation Monitoring period activities were completed, determined that the remedy implemented for the Site is protective of human health and the environment in the short-term.

The second five year review made a determination that the remedy for the Site was protective in the short-term because questions arose during the performance of the five year review concerning the adequacy of the data set that was being used in the evaluation of the soil vapor intrusion pathway. Since there was no building on the Site during the implementation of remedial activities, the vapor intrusion pathway had not been evaluated. In response to this concern, EPA's contractor collected 10 soil gas samples from beneath the asphalt parking lot on January 9 and 12, 2006. EPA Region 2 soil vapor intrusion pathway typically recommends collecting sub-slab or indoor air samples. However, that was not possible since the only structure at the Site, an office trailer, does not have a basement or slab. Therefore, sub-slab sampling could not be performed and only soil gas sampling was conducted. A preliminary evaluation of the soil gas data collected at the Site in 2006 identified three of the ten samples at concentrations of potential concern.

To address this potential vapor intrusion pathway, the second five-year review suggested that the Agency issue an explanation of significant differences (ESD) to document a final decision to include institutional controls in the form of a ''red-flag'' in the computer system of the Town of Hempstead Building Department as part of the overall remedy for the Site. The ''red flag'' is intended to provide notice of a potential vapor intrusion problem to anyone seeking a construction permit and provide notice to EPA that a permit is being sought to erect a building on the Site. Implementation of this action by the Town of Hempstead Building Department would ensure that before a building permit is granted, the owner would either have to agree to install a soil vapor mitigation system or demonstrate through sampling that a soil vapor mitigation system is not needed. Since the issuance of the second five-year review, EPA has determined that the vapors detected at the Site are from an off-site source and, therefore, an ESD was deemed not to be necessary and CERCLA action is not appropriate. However, the five-year review concluded the institutional control is necessary for the property and currently remains in place. EPA is satisfied that the town notification procedure will adequately address any future vapor intrusion issues at the former site under state authority. Therefore, the Site is protective of human health and the environment.

Since it has been determined that the source of vapors is not related to the CERCLA release, it has been determined that five-year reviews are no longer necessary. The 2009 five-year review was the final review for the Site.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. The RODs were subject to a public review process. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories.

Determination That the Site Meets the Criteria for Deletion in the NCP

All of the completion requirements for this Site have been met, as described in the August 4, 2011 Final Close-Out Report. The State of New York, in an August 4, 2011 letter concurred with the proposed deletion of this Site from the NPL.

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New York, through NYSDEC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

V. Deletion Action

The EPA, with concurrence of the State of New York through the Department of Environmental Conservation, has determined that all appropriate response actions under CERCLA have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 26, 2011 unless EPA receives adverse comments by September 12, 2011. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 5, 2011.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

APPENDIX B—[AMENDED]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for ''Pasley Solvents & Chemicals, Inc.'' ''Hempstead, New York''.

[FR Doc. 2011–20587 Filed 8–11–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Parts 1401, 1402, 1415, 1417, 1419, 1436, and 1452

RIN 1093–AA13

Acquisition Regulation Miscellaneous Changes

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is amending the Department of the Interior Acquisition Regulation to be consistent with the Federal Acquisition Regulation, and to add a new clause covering contract administration roles and responsibilities.

DATES: This rule is effective on September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Tiffany A. Schermerhorn, Senior Procurement Analyst, Office of Acquisition and Property Management, Office of the Secretary, telephone (202) 254–5517, fax (202) 254–5591, or e-mail *tiffany_schermerhorn@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: The Department of the Interior (DOI) published a proposed rule in the **Federal Register** at 76 FR 15901 on March 22, 2011, to revise the Department of the Interior Acquisition Regulation (DIAR). These changes make minor corrections to DOI acquisition procedures to make the DOI regulation consistent with the Federal Acquisition Regulation (FAR), and add a new clause covering contract administration roles and responsibilities.

The comment period closed May 23, 2011. No public comments were received. DOI has concluded that the proposed rule should be adopted as a final rule with no changes.

1. Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

2. The Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements on small entities.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

6. Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially or directly affect the relationship between Federal and State governments or impose costs on States or localities. A Federalism Assessment is not required.

7. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) of the Order.

8. Paperwork Reduction Act of 1995

This rule does not contain an information collection, as defined by the Paperwork Reduction Act.

9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

10. Effects on the Energy Supply

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 48 CFR Parts 1401, 1402, 1415, 1417, 1419, 1436, and 1452

Government procurement.

Dated: August 1, 2011.

Rhea S. Suh,

Assistant Secretary for Policy, Management and Budget.

For the reasons set out in the preamble, we amend Chapter 14 of Title 48 Code of Federal Regulations, parts 1401, 1402, 1415, 1417, 1419, 1436, and 1452 as follows:

■ 1. The authority citation for 48 CFR Parts 1401, 1402, 1415, 1417, 1419, 1436, and 1452 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

■ 2. Revise section 1401.670 to read as follows:

1401.670 Contracting officers' representatives.

When a CO elects to appoint an individual to act as an authorized representative in the administration of a contract, the CO must notify the contractor of the COR appointment in writing, and provide the name and contact information of the COR.

■ 3. Revise section 1401.670–1 to read as follows:

1401.670–1 Contract clause.

Insert the clause at 1452.201–70 in solicitations and contracts under which a COR will be appointed.

PART 1402—DEFINITIONS OF WORDS AND TERMS

■ 4. In section 1402.170, remove the entry ''BUDS Business Utilization Development Specialist'' from the list, and add to the list the entry ''SBS Small Business Specialist'' after ''SBA Small Business Administration.''

PART 1415—CONTRACTING BY NEGOTIATION

■ 5. Amend section 1415.404–4 as follows:

■ a. In paragraph (a), remove the reference to ''FAR 15.905'' and add in its place ''FAR 15.404–4.''

■ b. Remove paragraph (c).

PART 1417—SPECIAL CONTRACTING METHODS

■ 6. Remove subpart 1417.5.

PART 1419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS

■ 7. In section 1419.202–70, revise paragraph (h) to read as follows:

1419.202–70 Acquisition screening and SBS recommendations.

* * * * *

(h) The CO shall document the rationale for not accepting a SBS recommendation on DI Form 1886, under ''Notes.'' (See FAR 19.202.) Disagreements between the CO and the SBS concerning the decision to use a set aside or the 8(a) program shall be resolved by the BPC. The BPC shall annotate the resolution, with signature, in the ''Notes'' section of the form. The BPC may consult with the OSDBU to obtain assistance in resolving the disagreement.

PART 1436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 8. In section 1436.270–1, in paragraph (b), revise the table entitled ''Table 1436–1—Uniform Contract Format'' to read as follows:

1436.270–1 Uniform contract format.

* * * * *

(b) * * *

TABLE 1436–1—UNIFORM CONTRACT FORMAT

Section	Title
Part I—The Schedule	
A	Solicitation/contract form.
B	Bid schedule.
C	Specifications/Drawings.
D	Packaging and marking.
E	Inspection and acceptance.
F	Deliveries or performance.
G	Contract administration data.
H	Special contract requirements.
Part II—Contract Clauses	
I	Contract clauses.
Part III—List of Documents, Exhibits, and Other Attachments	
J	List of attachments.
Part IV—Representations and Instructions	
K	Representations, certifications, and other statements of offerors.
L	Instructions, conditions, and notices to offerors.
M	Evaluation factors for award.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Add new section 1452.201–70 to read as follows:

1452.201–70 Authorities and delegations.

As prescribed in section 1401.670–1, insert the following clause:

Authorities and Delegations (SEP 2011)

(a) The Contracting Officer is the only individual authorized to enter into or terminate this contract, modify any term or condition of this contract, waive any requirement of this contract, or accept nonconforming work.

(b) The Contracting Officer will designate a Contracting Officer's Representative (COR) at time of award. The COR will be responsible for technical monitoring of the contractor's performance and deliveries. The COR will be appointed in writing, and a copy of the appointment will be furnished to the Contractor. Changes to this delegation will be made by written changes to the existing appointment or by issuance of a new appointment.

(c) The COR is not authorized to perform, formally or informally, any of the following actions:

(1) Promise, award, agree to award, or execute any contract, contract modification, or notice of intent that changes or may change this contract;

(2) Waive or agree to modification of the delivery schedule;

(3) Make any final decision on any contract matter subject to the Disputes Clause;

(4) Terminate, for any reason, the Contractor's right to proceed;

(5) Obligate in any way, the payment of money by the Government.

(d) The Contractor shall comply with the written or oral direction of the Contracting Officer or authorized representative(s) acting within the scope and authority of the appointment memorandum. The Contractor need not proceed with direction that it considers to have been issued without proper authority. The Contractor shall notify the Contracting Officer in writing, with as much detail as possible, when the COR has taken an action or has issued direction (written or oral) that the Contractor considers to exceed the COR's appointment, within 3 days of the occurrence. Unless otherwise provided in this contract, the Contractor assumes all costs, risks, liabilities, and consequences of performing any work it is directed to perform that falls within any of the categories defined in paragraph (c) prior to receipt of the Contracting Officer's response issued under paragraph (e) of this clause.

(e) The Contracting Officer shall respond in writing within 30 days to any notice made under paragraph (d) of this clause. A failure of the parties to agree upon the nature of a direction, or upon the contract action to be taken with respect thereto, shall be subject to the provisions of the Disputes clause of this contract.

(f) The Contractor shall provide copies of all correspondence to the Contracting Officer and the COR.

(g) Any action(s) taken by the Contractor, in response to any direction given by any person acting on behalf of the Government or any Government official other than the Contracting Officer or the COR acting within his or her appointment, shall be at the Contractor's risk.

(End of clause)

■ 10. In section 1452.228–7, in paragraph (a), remove the reference ''1428.311–2'' and add in its place ''1428.311–1.''

[FR Doc. 2011–20516 Filed 8–11–11; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110729451–1413–02]

RIN 0648–BB12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Emergency Rule To Increase the Recreational Quota for Red Snapper and Suspend the Recreational Red Snapper Closure Date

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

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to increase the recreational quota for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2011 fishing season and suspend the October 1 closure date, as requested by the Gulf of Mexico Fishery Management Council (Council). At its May 2011 meeting, the Council's Science and Statistical Committee (SSC) recommended that the red snapper total allowable catch (TAC) be increased by 345,000 lb (156,489 kg). At its June 2011 meeting, the Council requested that NMFS publish an emergency rule to assign the entire 345,000 lb (156,489 kg) of additional TAC to the recreational sector and suspend the October 1 closure date of the recreational fishing season. If NMFS determines, after reviewing the data, that the recreational red snapper quota was not reached by the July 19, 2011, projected closure date, NMFS will publish a subsequent rule in the **Federal Register** to reopen red snapper harvest for a limited time period during the 2011 fishing season. The intent of this rulemaking is to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: This emergency rule is effective September 12, 2011, through December 31, 2011.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which include a supplemental environmental assessment, may be obtained from the Southeast Regional Office Web site at *http://sero.nfms.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone: 727–824–5305, e-mail: *Cynthia.Meyer@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1355(c)).

This emergency rule increases the recreational quota for red snapper in the Gulf reef fish fishery to 3.866 million lb (1.754 million kg), based on the increased TAC recommended by the SSC. On May 19, 2011, the SSC recommended increasing the red snapper acceptable biological catch (ABC) to 7.530 million lb (3.416 million kg) from 7.185 million lb (3.259 million kg), which was the ABC recommended by the SSC after the 2009 update assessment was conducted through the Southeast Data Assessment and Review process. The Southeast Fisheries Science Center (SEFSC) reran the 2009 update assessment in May 2011 using updated data. The 2009 update assessment had used projected landings data from 2010. The 2011 rerun of the 2009 update assessment incorporated finalized landings data from 2009 and 2010. The SSC identified a new overfishing limit (OFL) for red snapper based on the updated landings data. The corresponding ABC for red snapper, calculated as 75 percent of the OFL, is 7.530 million lb (3.416 million kg). This ABC was also recommended as the new TAC, an increase of 345,000 lb (156,489 kg). During 2010, the recreational sector harvested only 66 percent of its quota, whereas the commercial sector harvested 96 percent of its quota. Because of the greater economic impacts incurred by the recreational sector in 2010, at the Council's June meeting, the Council requested that NMFS develop an emergency rule that would assign the entire 345,000 lb (156,489 kg) of increased TAC to the recreational sector for the 2011 fishing season and suspend the October 1 closure date.

The recreational red snapper fishing season opens each year on June 1 and officially closes at 12:01 a.m., on October 1 (in accordance with regulations at 50 CFR 622.34(m)), unless the quota is met before this date, in which case NMFS publishes a rule in the **Federal Register** announcing an earlier closure date. Pursuant to 50 CFR 622.43(c), if subsequent data indicate that the quota was not reached, NMFS may reopen the fishery to provide an opportunity for the quota to be reached, but must do so prior to October 1.

This year NMFS announced the current closure date on April 29, 2011 (76 FR 23911), through a final rule that adjusted the commercial and recreational quotas for red snapper. The closure date for the recreational red snapper season of 12:01 a.m., local time, July 19, 2011, was based on projections of when the recreational red snapper quota of 3.521 million lb (1.597 million kg), also implemented through that final rule, would be met. NMFS will review the landings data in late August 2011 to determine if the 2011 recreational red snapper quota was met. If NMFS determines that the 2011 recreational red snapper quota, plus the additional quota of 345,000 lb (156,489 kg), was not met by the July 19, 2011, closure date, NMFS will publish a subsequent rule in the **Federal Register** announcing a reopening of the red snapper recreational season for a limited time period. A reopening could occur after September 30, 2011, but before December 31, 2011.

Need for This Emergency Rule

At its June 2011 meeting, the Council requested that NMFS promulgate emergency regulations to increase the recreational quota for red snapper for the 2011 fishing season and suspend the 12:01 a.m., October 1 season closure date to permit a later reopening in order to achieve the optimum yield for the fishery, thereby maximizing the social and economic benefits for recreational red snapper fishermen. The ''Policy Guidelines for the Use of Emergency Rules'' (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists.

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

NMFS is promulgating these emergency regulations under these three criteria. Under the first criteria for an emergency rule, the recently discovered circumstance is the rerun of the 2009 update assessment for red snapper, conducted by the SEFSC in May 2011. This rerun updated the 2009 assessment using more recent data, *i.e.* the finalized 2009 and 2010 landings data. Based on

the finalized landings data it was determined that the TAC for red snapper could be increased.

Under the second criteria for an emergency rule, without implementation of this emergency rule, the recreational red snapper component of the Gulf reef fish fishery is at risk of not achieving the OY for the fishery, which is the goal of National Standard 1 under the Magnuson-Stevens Act (16 U.S.C. 1851(a)(1)). National Standard 1 states that, ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.''

Under the third criteria for an emergency rule, the immediate benefit of increasing the recreational quota for red snapper outweighs the value of advance notice and public comment. This rule would allow the recreational red snapper component of the fishery to harvest an additional 345,000 lb (156, 489 kg) of quota, which could potentially lengthen the recreational red snapper season if NMFS determines the recreational quota was not met prior to the July 19, 2011 closure date.

Providing advance notice and the opportunity for public comment on this rulemaking would likely delay reopening the fishery early enough or long enough to provide recreational red snapper fishermen the opportunity to achieve OY for the fishery, thus foregoing social and economic benefits for recreational red snapper fishermen. First, under the current framework mechanism any increase in the red snapper TAC must occur in advance of a subsequent rule to reopen the fishery. Delaying this rule would delay reopening the fishery after data on actual harvest become available because there is insufficient time to complete two rulemakings involving notice and comment within a time that would allow harvest of the quota. Because of the increasing likelihood for lost fishing days due to inclement weather later in the calendar year, it would be critical to reopen the fishery as early as possible. Second, the October 1 season closure date for the recreational fishing season currently precludes NMFS from reopening the recreational sector past September 30. Suspension of the October 1 date also must occur prior to any subsequent rule to reopen the fishery and delay would similarly affect the opportunity to achieve OY.

Measures Contained in this Emergency Rule

This emergency rule will increase the recreational quota to 3.866 million lb (1.754 million kg) and suspend the October 1 closure date of the recreational fishing season. Also, if NMFS determines the recreational quota is not met by the July 19, 2011, closure date, the Assistant Administrator will file a subsequent rule with the Office of the Federal Register to announce a reopening of the recreational red snapper season for a limited time period during the 2011 fishing season.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to achieve the optimum yield for the red snapper component of the reef fish fishery in the Gulf EEZ and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Providing prior notice and the opportunity for public comment would be contrary to the public interest because delaying suspension of the October 1 closure date of the recreational fishing season would impede NMFS from reopening the recreational sector after September 30. That, in turn, would result in recreational red snapper fishermen not having the opportunity to achieve OY for the fishery, thus foregoing social and economic benefits for recreational red snapper fishermen. Recreational red snapper data from the 2011 fishing season will not be available until late August, 2011. Therefore, NMFS will not be able to determine if the recreational sector may reopen until sometime in September. Therefore, a reopening of the recreational sector would not be able to occur until after October 1. This emergency rule will allow NMFS to reopen the recreational sector after October 1, and before December 31, 2011, if NMFS determines that the recreational quota was not reached by the July 19, 2011 closure date. This will give recreational red snapper fishermen the opportunity to achieve OY for the fishery, thus reaching the goal of National Standard 1 of the Magnuson-Stevens Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 9, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (m) is suspended and paragraph (w) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(w) *Closure of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

■ 3. In § 622.42, paragraph (a)(2)(i) is suspended and paragraph (a)(2)(iii) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(2) * * *

(iii) *Recreational quota for red snapper.* The recreational quota for red snapper is 3.866 million lb (1.754 million kg), round weight.

* * * * *

[FR Doc. 2011–20597 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 156
Friday, August 12, 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 ENERGY

10 CFR Part 430

[Docket Number EERE–2011–BT–TP–0054]

RIN 1904–AC63

Energy Conservation Program: Test Procedures for Residential Clothes Dryers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) has initiated a test procedure rulemaking for residential clothes dryers to further investigate the effects of automatic cycle termination on the energy efficiency. DOE specifically is seeking information, data, and comments regarding methods for more accurately measuring the effects of automatic cycle termination in the residential clothes dryer test procedure. DOE will address the issues surrounding testing of automatic cycle termination sensors in this rulemaking prior to the compliance date of amended energy conservation standards recently adopted for residential clothes dryers. To the extent required by the statute, DOE will also address any potential impacts on the amended energy conservation standards resulting from these test procedure amendments during the rulemaking process.

DATES: Written comments and information are requested on or before September 12, 2011.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2011–BT–TP–0054 and/or RIN 1904–AC63, by any of the following methods:

- *E-mail: RCDAT-2011-TP-0054@ee.doe.gov.* Include docket number EERE–2011–BT–TP–0054 and/or RIN 1904–AC63 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. Stephen Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: 202–586–7463. E-mail: *Stephen.Witkowski@ee.doe.gov.*

In the Office of the General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, 1000 Independence Ave., SW, Room 6A–179, Washington, DC 20585. Telephone: 202–586–7796; E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 6, 2011, DOE published in the **Federal Register** a final rule for the residential clothes dryer and room air conditioner test procedure rulemaking (76 FR 972) (January TP final rule), in which it (1) adopted the provisions for the measurement of standby mode and off mode power use for those products; and (2) adopted several amendments to the clothes dryer and room air conditioner test procedures concerning the active mode for these products. 76 FR 972 (Jan. 6, 2011). In the January TP final rule, DOE declined to adopt the amendments to more accurately measure automatic cycle termination that were originally proposed in the test procedure supplemental notice of proposed rulemaking (June TP SNOPR) (75 FR 37594, 37612–37620 (June 29, 2010)). As further discussed in the January TP final rule, DOE conducted testing of representative residential clothes dryers using the automatic cycle termination test procedure proposed in the June TP SNOPR. The results of the testing revealed that all of the clothes dryers tested significantly over-dried the DOE test load to near bone dry and, as a result, the measured energy factor (EF) values were significantly lower than EF values obtained using the existing DOE test procedure. The test data also indicated that clothes dryers equipped with automatic termination controls would be considered less efficient than timer dryers. 76 FR 977.

As noted in the January TP final rule, DOE believes the test procedure amendments for automatic cycle termination proposed in the June TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems using the test load specified in the DOE test procedure. DOE believes that clothes dryers with automatic termination sensing control systems, which infer the remaining moisture content (RMC) of the load from the properties of the exhaust air such as temperature and humidity, may be designed differently than the procedures in the June TP SNOPR considered. Specifically, DOE believes these types of dryers are designed to stop the cycle when the consumer load has a higher RMC than the RMC obtained using the proposed automatic cycle termination test procedure in conjunction with the existing test load. However, in considering whether other test loads would be appropriate to incorporate into the DOE test procedure to produce both representative and repeatable test results, DOE notes that manufacturers have also indicated that test load types and test cloth materials different than those specified in the DOE test procedure do not produce results as repeatable as those obtained using the test load as currently specified. 76 FR 977.

In support of its test procedure rulemaking, DOE conducts in-depth technical analyses of publicly available test standards and other relevant information. DOE continually seeks data and public input to improve its testing methodologies to more accurately reflect consumer use. In general, DOE is requesting comment and supporting

data regarding methods for more accurately measuring the effects of automatic cycle termination. Additionally, DOE seeks comment and information on the specific topics below:

Test Load Characteristics

DOE notes that the current test procedure specifies that tests be conducted using a cotton momie test cloths that are each 24 inches by 36 inches in dimensions and are a blend of 50-percent cotton and 50-percent polyester. DOE recognizes that this test load may not be representative of real-world laundry loads dried by consumers and that manufacturers may be designing their automatic cycle termination control systems to achieve higher final moisture contents closer to 5-percent RMC when drying real-world laundry loads even though the same drying process conducted with the DOE test cloth would result in a much lower RMC. However, DOE also notes that manufacturers have indicated that test load types and test cloth materials different than those specified in the DOE test procedure do not produce results as repeatable as those obtained using the test load as currently specified. DOE has requested information on the characteristics of real-world laundry loads dried by consumers from a laundry detergent manufacturer that develops a significant amount of consumer usage data, but has not yet received any such data.

DOE notes that the Association of Home Appliance Manufacturers (AHAM) clothes dryer test standard HLD–1–2009, ''Household Tumble Type Clothes Dryers,'' and the International Electrotechnical Commission (IEC) test standard 61121, ''Tumble dryers for household use—Methods for measuring the performance,'' Edition 3 (2005) both specify a test load consisting of cotton bed sheets, towels, and pillowcases. As noted in the January TP final rule, DOE believes that clothes dryers with automatic termination sensing control systems, which infer the RMC of the load from the properties of the exhaust air such as temperature and humidity, may be designed to stop the cycle when the consumer load has a higher RMC than the RMC obtained using the automatic cycle termination test procedure proposed in the June TP SNOPR in conjunction with the existing test load. To investigate this, DOE conducted limited additional testing using a test load similar to that specified in AHAM Standard HLD–1–2009. For tests on two clothes dryers using the same automatic cycle termination settings (*i.e.,* normal cycle setting and highest temperature setting), the alternate test load was dried to 1.7 to 2.2 percent final RMC, with an average RMC of 2.0 percent. In comparison, the same clothes dryer under the same cycle settings dried the DOE test load to 0.3 to 1.2 percent RMC, with an average RMC of 0.7 percent.

- DOE requests consumer usage data on the characteristics of laundry loads dried by consumers, including material (*i.e.,* cotton, polyester, etc.), type (*i.e.,* t-shirts, towels, bed sheets, jeans, *etc.*), and quantity.
- DOE seeks comment on its limited testing comparing the current DOE test load to one similar to the AHAM and IEC test standard loads, described above. DOE also requests information and test data comparing the measured energy use of different test loads, including the AHAM and IEC test standard loads, to the DOE test load using the same automatic cycle termination settings. Please indicate the cycle settings used when providing data (when possible use the ''normal'' cycle or the cycle recommended by manufacturers for drying cotton or linen clothes). Please also indicate the type of sensor technology used for the clothes dryers under test (*e.g.,* temperature sensors or moisture sensors) and the starting and final moisture content of the test load (when possible use the starting moisture content of 57.5 percent with an 8.45 pound (lb) test load for standard size dryers and 3.00 lb test load for compact dryers).
- DOE requests test data on the repeatability of alternate test loads using automatic cycle termination, including those specified in the AHAM test standard HLD–1–2009 and other real-world loads.

Accuracy of Different Automatic Cycle Termination Sensors and Controls

DOE recognizes that different automatic cycle termination sensor technologies and control strategies may measure the remaining moisture content in a laundry load during the drying cycle to varying accuracy. However, through DOE's testing conducted for the January TP final rule using the DOE test cloth, shown in the table below, DOE was unable to determine whether certain sensor technologies more accurately measure the moisture content of the laundry load during the drying cycle (*i.e.,* DOE was unable to distinguish between sensor technologies).

TABLE 1—DOE CLOTHES DRYER AUTOMATIC CYCLE TERMINATION TESTS (TABLE III.8 IN FINAL RULE NOTICE WITH SENSOR TECHNOLOGY IDENTIFIED)

Test unit	Sensor technology	Current DOE test procedure EF *lb/kWh**	Current DOE test procedure w/modified field use factor** EF *lb/kWh*	June TP SNOPR automatic cycle termination procedure		
				EF *lb/kWh*	Percent change	Final RMC (percent)
Vented Electric Standard:						
Unit 3	Moisture + Temp	3.20	2.82	2.59	−19.1	1.0
Unit 4	Temperature	3.28	2.89	2.59	−21.2	0.6
Vented Gas:						
Unit 8	Temperature	2.83	2.50	2.42	−14.5	0.4
Unit 9	Temperature	2.85	2.51	2.38	−16.3	0.9
Unit 11	Moisture + Temp	2.98	2.63	2.40	−19.5	0.9
Vented Electric Compact 240V:						
Unit 12	Moisture + Temp	3.19	2.81	2.64	−17.3	0.5
Unit 13	Temperature	2.93	2.59	2.27	−22.7	1.4
Vented Electric Compact 120V:						
Unit 14	Moisture + Temp	3.23	2.85	1.98	−38.8	0.7
Ventless Electric Compact 240V:						

TABLE 1—DOE CLOTHES DRYER AUTOMATIC CYCLE TERMINATION TESTS (TABLE III.8 IN FINAL RULE NOTICE WITH SENSOR TECHNOLOGY IDENTIFIED)—Continued

Test unit	Sensor technology	Current DOE test procedure EF *lb/kWh**	Current DOE test procedure w/modified field use factor** EF *lb/kWh*	June TP SNOPR automatic cycle termination procedure		
				EF *lb/kWh*	Percent change	Final RMC (percent)
Unit 15	Moisture + Temp	2.37	2.09	2.07	−12.4	1.1

* Tests use the appropriate field use factor of 1.04 for clothes dryers with automatic termination.
** Field use factor changed from the nominal 1.04 for clothes dryers with automatic termination to 1.18, which is normally for timer dryers.

• DOE requests information and data on the accuracy of different sensor technologies and control strategies (*e.g.,* temperature sensors, moisture sensors, or a combination of both) in their ability to measure the remaining moisture content of the laundry load. Please indicate the cycle settings used when providing data (when possible use the ''normal'' cycle or the cycle recommended by manufacturers for drying cotton or linen clothes). Please also indicate the type of sensor technology used for the clothes dryers under test (*e.g.,* temperature sensors or moisture sensors) and the starting and final moisture content of the test load (when possible use the starting moisture content of 57.5 percent with an 8.45 pound (lb) test load for standard size dryers and 3.00 lb test load for compact dryers).

• DOE requests data on the target RMC used by manufacturers when designing and programming automatic cycle termination controls that maintains consumer satisfaction. DOE also requests information on how the target RMC varies by clothes dryer capacity. As noted in the table above, the final measured RMC from testing of DOE's sample ranged from 0.4 percent to 1.4 percent, with an average of 0.8 percent.

Water Conditions

DOE notes that the IEC is currently revising its test standard for clothes dryers, that is, IEC Standard 61121. As part of its revised draft, the IEC notes that the characteristics of the water used for wetting the test load prior to the test, particularly the conductivity, can have a large influence on test results when testing automatic cycle termination clothes dryers with moisture sensors. Clothes dryers with moisture sensors use conductivity sensor bars to determine the amount of moisture in the load when the load comes in contact with the sensors. The following table provides the characteristics of either soft or hard water to be used for appliance testing under IEC Standard 61121.

TABLE 2—COMPOSITION OF SOFT AND HARD WATER FOR APPLIANCE TESTING

Property	Unit	Water type	
		Standard soft water	Standard hard water
Total hardness	mmol/l (Ca^{2+}/Mg^{2+})	0.50 ± 0.20	2.50 ± 0.20
Conductivity (at 20 °C)	µS/cm	150 ± 50	750 ± 150

DOE is not aware of any data regarding the effects of conductivity of the water used to wet the test load on the measured efficiency.

• DOE requests information and data on the effects of conductivity of the water supply used to wet the test load prior to drying cycle tests on the measured efficiency using automatic cycle termination. In particular, DOE requests data on the effects of using unaltered water supplies versus water supplies adjusted to meet the specifications in the draft version of IEC 61121. Please indicate the cycle settings used when providing data (when possible use the ''normal'' cycle or the cycle recommended by manufacturers for drying cotton or linen clothes). Please also indicate the type of sensor technology used for the clothes dryers under test (*e.g.,* temperature sensors or moisture sensors) and the starting and final moisture content of the test load (when possible use the starting moisture content of 57.5 percent with an 8.45 pound (lb) test load for standard size dryers and 3.00 lb test load for compact dryers).

• DOE requests data on any potential burden associated with requirements for and adjustments to the water supply used for wetting the test load.

Cycle Settings—ECOS Test Results

DOE notes that ECOS Consulting (ECOS) conducted a testing program for the Natural Resources Defense Council (NRDC) to evaluate clothes dryer automatic cycle termination.[1] (The ECOS report stated that the difference between a standard clothes dryer and one that is effective at turning itself off when clothes are actually dry is about 0.76 kilowatt-hours (kWh) per load (5,000 kWh over typical lifetime). The ECOS report also stated that automatic termination cycles using lower heat settings or lower dryness level reduce energy consumption and increase efficiency because less energy is spent heating air, cloth, and metal. The ECOS report summarized testing results for one clothes dryer that showed that the difference in energy consumption between the highest and lowest heat settings was 13 percent and that the drying time increased (from 35 to 49 minutes), but very similar final RMCs were achieved.

• DOE requests information and data on consumer usage habits regarding cycles selected for drying. In your responses, please be specific by indicating general cycle settings, temperature settings, and dryness level settings used by consumers.

[1] NRDC, No. 30 at pp. 1–40. Public comment submitted in docket number EERE–2007–BT–STD–0010.

• DOE requests additional information and data on the effects of using different automatic cycle termination settings. When providing test results, please also indicate the type of sensor technology used for the clothes dryers under test (*e.g.,* temperature sensors or moisture sensors) and the starting and final moisture content of the test load (when possible use the starting moisture content of 57.5 percent with an 8.45 pound (lb) test load for standard size dryers and 3.00 lb test load for compact dryers).

• DOE requests comments on methodology for accounting for various cycle setting options in the DOE test procedure. In particular, if interested parties believe that DOE should test multiple cycles, please provide consumer usage data on the percentage of drying cycles that consumers use for each automatic cycle termination setting.

• DOE also requests comment on the additional testing burden associated with a requirement to measure multiple cycle settings.

Issued in Washington, DC, on August 9, 2011.

Roland J. Risser,

Program Manager, Building Technologies Program, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2010–BT–STD–0051]

RIN 1904–AC62

Notice of Intent to Negotiate Proposed Rule on Energy Efficiency Standards for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of intent to establish a subcommittee and negotiate a proposed rule.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is giving notice that it intends to establish a negotiated rulemaking subcommittee under ERAC in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to negotiate proposed Federal standards for the energy efficiency of low-voltage dry-type distribution transformers. The purpose of the subcommittee will be to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended. The subcommittee will consist of representatives of parties having a defined stake in the outcome of the proposed standards, and will consult as appropriate with a range of experts on technical issues.

DATES: Written comments and requests to be appointed as members of the subcommittee are welcome and should be submitted by August 29, 2011.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2011–BT–STD–0051, by any of the following methods:

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

• *E-mail: LVDT-2011-STD-0051@ee.doe.gov.* Include EERE–2011–BT–STD–0051 and/or RIN 1904–AC62 in the subject line of the message.

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, EERE–2011–BT–STD–0051 and/or RIN 1904–AC62, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–2J), 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 287–1692. *E-mail: John.Cymbalsky@ee.doe.gov.* Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel (GC–71), 1000 Independence Ave., SW., Washington, DC 20585–0121. *Telephone:* (202) 287–6111. *E-mail: Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Preamble

I. Statutory Authority

This notice announcing DOE's intent to negotiate a proposed regulation setting energy efficiency standards for distribution transformers was developed under the authority of sections 563 and 564 of the NRA (5 U.S.C. 561–570, Pub. L. 104–320). The regulation setting energy efficiency standards for distribution transformers that DOE is proposing to develop under a negotiated rulemaking will be developed under the authority of EPCA, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

II. Background

As required by the NRA, DOE is giving notice that it is establishing a subcommittee under ERAC to develop proposed energy efficiency standards for distribution transformers.

EPCA, as amended, directs DOE to adopt energy conservation standards for those distribution transformers for which standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(a)(2)). DOE published a final rule in October 2007 that established energy conservation standards for liquid-immersed and medium-voltage dry-type (MVDT) distribution transformers. 72 FR 58190 (October 12, 2007); see 10 CFR 431.196(b)–(c). During the course of that rulemaking, the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA to set standards for low-voltage dry-type (LVDT) distribution transformers. (EPACT 2005, Section 135(c); codified at 42 U.S.C. 6295(y)) Consequently, DOE removed these transformers from the scope of that rulemaking. 72 FR at 58191 (October 12, 2007).

On July 29, 2011, DOE published a notice of its intent to establish a subcommittee under the ERAC to negotiate a proposed rule for liquid-immersed and MVDT distribution transformers (76 FR 45472). The negotiated rulemaking contemplated in today's notice is complimentary of that process.

A. Negotiated Rulemaking

DOE has decided to use the negotiated rulemaking process to develop proposed

energy efficiency standards for distribution transformers. Under EPCA, Congress mandated that DOE develop regulations establishing energy efficiency standards for covered residential and commercial appliances that are designed to achieve the maximum improvement in energy efficiency that are technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) The primary reason for using the negotiated rulemaking process for developing a proposed Federal standard is that stakeholders strongly support a consensual rulemaking effort. DOE believes such a regulatory negotiation process will be less adversarial and better suited to resolving complex technical issues. An important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation will enable DOE to engage in direct and sustained dialog with informed, interested, and affected parties when drafting the regulation, rather than obtaining input during a public comment period after developing and publishing a proposed rule. Gaining this early understanding of all parties' perspectives allows DOE to address key issues at an earlier stage of the process, thereby allowing more time for an iterative process to resolve issues. A rule drafted by negotiation with informed and affected parties is expected to be potentially more pragmatic and more easily implemented than a rule arising from the traditional process. Such rulemaking improvement is likely to provide the public with the full benefits of the rule while minimizing the potential negative impact of a proposed regulation conceived or drafted without the full prior input of outside knowledgeable parties. Because a negotiating subcommittee includes representatives from the major stakeholder groups affected by or interested in the rule, the number of public comments on the proposed rule may be decreased. DOE anticipates that there will be a need for fewer substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final rule.

B. The Concept of Negotiated Rulemaking

Usually, DOE develops a proposed rulemaking using Department staff and consultant resources. Typically, a preliminary analysis is vetted for stakeholder comments after a Framework Document is published and comments taken thereon. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues raised in the proposed rule. Congress noted in the NRA, however, that regulatory development may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *.'' (5 U.S.C. 561(2)(2)) Congress also stated that ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (5 U.S.C. 561(2)(3))

Using negotiated rulemaking to develop a proposed rule differs fundamentally from the Department-centered process. In negotiated rulemaking, a proposed rule is developed by an advisory committee or subcommittee, chartered under FACA (5 U.S.C. App. 2), composed of members chosen to represent the various interests that will be significantly affected by the rule. The goal of the advisory committee or subcommittee is to reach consensus on the treatment of the major issues involved with the rule. The process starts with the Department's careful identification of all interests potentially affected by the rulemaking under consideration. To help with this identification, the Department publishes a notice such as this one in the **Federal Register**, identifying a preliminary list of interested parties and requesting public comment on that list. Following receipt of comments, the Department establishes an advisory committee or subcommittee representing the full range of stakeholders to negotiate a consensus on the terms of a proposed rule. Representation on the advisory committee or subcommittee may be direct; that is, each member may represent a specific interest, or may be indirect, such as through trade associations and/or similarly-situated parties with common interests. The Department is a member of the advisory committee or subcommittee and represents the Federal government's interests. The advisory committee or subcommittee chair is assisted by a neutral mediator who facilitates the negotiation process. The role of the mediator, also called a facilitator, is to apply proven consensus-building techniques to the advisory committee or subcommittee process.

After an advisory committee or subcommittee reaches consensus on the provisions of a proposed rule, the Department, consistent with its legal obligations, uses such consensus as the basis of its proposed rule, which then is published in the **Federal Register**. This publication provides the required public notice and provides for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested), and request judicial review. DOE anticipates, however, that the pre-proposal consensus agreed upon by the advisory committee or subcommittee will narrow any issues in the subsequent rulemaking.

C. Proposed Rulemaking for Energy Efficiency Standards for Distribution Transformers

The NRA enables DOE to establish an advisory committee or subcommittee if it is determined that the use of the negotiated rulemaking process is in the public interest. DOE intends to develop Federal regulations that build on the depth of experience accrued in both the public and private sectors in implementing standards and programs.

DOE has determined that the regulatory negotiation process will provide for obtaining a diverse array of in-depth input, as well as an opportunity for increased collaborative discussion from both private-sector stakeholders and government officials who are familiar with energy efficiency of distribution transformers. In July of 2011, DOE initiated the convening stage of the negotiated rulemaking process to identify and interview appropriate public- and private-sector stakeholders. DOE retained an expert convener to contact parties potentially affected by energy efficiency standards for distribution transformers to determine whether stakeholders are interested in participating in a negotiated rulemaking process and whether they believe stakeholder issues can be addressed and resolved through a regulatory negotiation. Following an evaluation of initial stakeholder interest and input, the independent convener determined that there is sufficient enthusiasm among stakeholders to support a negotiated rulemaking process and that that there is a reasonably good chance of successfully reaching a consensus agreement among stakeholders on the rule.

D. Department Commitment

In initiating this regulatory negotiation process to develop energy efficiency standards for distribution transformers, DOE is making a commitment to provide adequate resources to facilitate timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. DOE will provide administrative support for the process and will take steps to ensure that the advisory committee or subcommittee has the dedicated resources it requires to complete its work in a timely fashion. Specifically, DOE will make available the following support services: properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the service of a facilitator; and such additional research and other technical assistance as may be necessary.

To the maximum extent possible consistent with the legal obligations of the Department, DOE will use the consensus of the advisory committee or subcommittee as the basis for the rule the Department proposes for public notice and comment.

E. Negotiating Consensus

As discussed above, the negotiated rulemaking process differs fundamentally from the usual process for developing a proposed rule. Negotiation enables interested and affected parties to discuss various approaches to issues rather than asking them only to respond to a proposal developed by the Department. The negotiation process involves a mutual education of the various parties on the practical concerns about the impact of standards. Each advisory committee or subcommittee member participates in resolving the interests and concerns of other members, rather than leaving it up to DOE to evaluate and incorporate different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee or subcommittee, unless the committee or subcommittee itself unanimously agrees to use a different definition. (5 U.S.C. 562) In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all parties, including DOE, in identifying their real interests in the rule, and thus will enable parties to focus on and resolve the important issues.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

The convener identified the following issues and concerns that will underlie the work of the Negotiated Rulemaking Committee on Energy Efficiency Standards for Distribution Transformers:

- DOE's key issues include assuring full compliance with statutory mandates. Congress has mandated that DOE establish minimum energy efficiency standards that are technologically feasible and economically justified.
- The committee must find ways to balance the goals and priorities of State regulatory programs and DOE's program for energy efficiency standards.
- Manufacturers desire that standards not diminish or constrain innovation for these products.
- Environmental advocates seek to ensure that standards achieve the maximum energy savings that are technologically feasible and economically justifiable.

To examine the underlying issues outlined above, and others not yet articulated, all parties in the negotiation will need DOE to provide data and an analytic framework complete and accurate enough to support their deliberations. DOE's analyses must be adequate to inform a prospective negotiation—for example, a preliminary Technical Support Document or equivalent must be available and timely.

B. Formation of Subcommittee

A subcommittee will be formed and operated in full compliance with the requirements of FACA and in a manner consistent with the requirements of the NRA. DOE has determined that the subcommittee not exceed 25 members. The Department believes that more than 25 members would make it difficult to conduct effective negotiations. DOE is aware that there are many more potential participants than there are membership slots on the subcommittee. The Department does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest can be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. To provide adequate representation, those coalitions must agree to support, both financially and technically, a member of the subcommittee whom they choose to represent their interests.

DOE recognizes that when it establishes energy efficiency standards for residential products and commercial equipment, various segments of society may be affected in different ways, in some cases producing unique ''interests'' in a proposed rule based on income, gender, or other factors. The Department will pay attention to providing that any unique interests that have been identified, and that may be significantly affected by the proposed rule, are represented.

FACA also requires that members of the public have the opportunity to attend meetings of the full committee and speak or otherwise address the committee during the public comment period. In addition, any member of the public is permitted to file a written statement with the advisory committee. DOE plans to follow these same procedures in conducting meetings of the subcommittee.

C. Interests Involved/Subcommittee Membership

DOE anticipates that the subcommittee will comprise no more than 25 members who represent affected and interested stakeholder groups, at least one of whom must be a member of the ERAC. As required by FACA, the Department will conduct the negotiated rulemaking with particular attention to ensuring full and balanced representation of those interests that may be significantly affected by the proposed rule governing standards for the energy efficiency of distribution transformers. Section 562 of the NRA defines the term *interest* as ''with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' Listed below are parties the Department to date has identified as being ''significantly affected'' by a proposed rule regarding the energy efficiency of distribution transformers.

- The Department of Energy
- Distribution transformers manufacturers and trade associations representing manufacturers
- Component manufacturers and related suppliers
- Utilities
- Energy efficiency/environmental advocacy groups
- Consumers

One purpose of this notice is to determine whether Federal standards regarding the energy efficiency of distribution transformers will significantly affect interests that are not listed above. DOE invites comment and suggestions on its initial list of significantly affected interests.

DOE also developed an initial list of stakeholders who could serve on the subcommittee to represent the above-listed interests. The following list includes organizations DOE tentatively has identified as being either potential members of the subcommittee, or potential members of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests listed above. DOE invites comment and suggestions on whether the following list of stakeholders identifies an accurate and comprehensive pool of stakeholders, or subcommittee members.

- Department of Energy
  - John Cymbalsky
- EarthJustice
  - Tim Ballo
- National Electrical Manufacturers Assocation
  - Jim Creevy
  - Clark Silcox
- Appliance Standards Awareness Program
  - Andrew DeLaski
- Federal Pacific
  - Robert Greeson
- American Council for an Energy Efficiency Economy
  - Steve Nadel
- Natural Resources Defense Council
  - Robin Roy
- AK Steel Corporation
  - Jerry Schoen
- California Energy Commission (as resource party)
- Acme Electric
  - Joe Ashley
- Eaton Corp
  - Carlos Siqueiros
- Federal Pacific
  - Rob Greeson
- GE
  - Bill Forsythe
- Hammond Power Solutions
  - Dhiru Patel
- Power Paragon
  - Thomas Proctor
- Mirus International
  - Tony Hoevenaars
- ONYX Power
  - Vijay Tendulkar
- Power Quality International
  - Jeffrey Turner
- Powersmiths International
  - Philip Ling
- Schneider Electric
  - Thomas Patzner
- Sola HD/Emerson
  - Dale Corel
- WEG Electric
  - Bill Oliver

The list provided above includes stakeholders whom DOE tentatively has identified as being either a potential member of the subcommittee or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests, also listed above. The list is not presented as a complete or exclusive list from which subcommittee members will be selected. Nor does inclusion on the list of potential parties mean that a listed party has agreed to participate as a member of the subcommittee or as a member of a coalition. The list merely indicates parties that DOE tentatively has identified as representing significantly affected interests in the proposed rule establishing energy efficiency standards for distribution transformers.

DOE requests comments and suggestions regarding its tentative list of potential members of the subcommittee on energy efficiency standards for distribution transformers. Members may be individuals or organizations. If the effort is to be fruitful, participants on the subcommittee should be able to fully and adequately represent the viewpoints of their respective interests. This document gives notice of DOE's process to other potential participants and affords them the opportunity to request representation in the negotiations. Those who wish to be appointed as members of the subcommittee, including those that have been tentatively identified by DOE in this Notice, should submit a request to DOE, in accordance with the public participation procedures outlined in the ''Dates'' and ''Addresses'' sections of this Notice. Membership of the subcommittee is likely to involve:

- Attendance at approximately five (5), one (1) to two (2) day meetings;
- Travel costs to those meetings; and
- Preparation time for those meetings.

Members serving on the subcommittee will not receive compensation for their services.

Interested parties who are not selected for membership on the subcommittee may make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The person may request to be placed on the subcommittee mailing list and submit written comments as appropriate.
- The person may attend subcommittee meetings, which are open to the public; caucus with his or her interest's member on the subcommittee; or even address the subcommittee during the public comment portion of the subcommittee meeting.
- The person could assist the efforts of a workgroup that the subcommittee might establish.

A subcommittee may establish informal workgroups, which usually are asked to facilitate committee deliberations by assisting with various technical matters (*e.g.,* researching or preparing summaries of the technical literature or comments on specific matters such as economic issues). Workgroups also might assist in estimating costs or drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, or formulating drafts of the various provisions and their justifications as previously developed by the subcommittee. Given their support function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied. Because it recognizes the importance of this support work for the subcommittee, DOE will provide appropriate technical expertise for such workgroups.

D. Good Faith Negotiation

Every subcommittee member must be willing to negotiate in good faith and have the authority, granted by his or her constituency, to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition therefore should designate as its representative a person having the credibility and authority to ensure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking can require the appointed members to give a significant amount of time, which must be sustained for as long as the duration of the negotiated rulemaking. Although the ERAC advisory committee charter will be in effect for 2 years from the date it is filed with Congress, DOE expects the subcommittee's deliberations to conclude or be terminated earlier than that. Other qualities of members that can be helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the

bargaining table in an attempt to reach a consensus, as opposed to keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from some of the positions often taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the subcommittee's discussions.

E. Facilitator

The facilitator will act as a neutral in the substantive development of the proposed standard. Rather, the facilitator's role generally includes:

- Impartially assisting the members of the subcommittee in conducting discussions and negotiations;
- Impartially assisting in performing the duties of the Designated Federal Official under FACA; and

F. Department Representative

The DOE representative will be a full and active participant in the consensus-building negotiations. The Department's representative will meet regularly with senior Department officials, briefing them on the negotiations and receiving their suggestions and advice so that he or she can effectively represent the Department's views regarding the issues before the subcommittee. DOE's representative also will ensure that the entire spectrum of governmental interests affected by the standards rulemaking, including the Office of Management and Budget, the Attorney General, and other Departmental offices, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

G. Subcommittee and Schedule

After evaluating the comments submitted in response to this notice and the requests for nominations, DOE will either inform the members of the subcommittee that they have been selected or determine that conducting a negotiated rulemaking is inappropriate. Due to the court-ordered deadline, DOE plans for the subcommittee to conduct deliberations in the summer and fall of 2011 and hopes that the subcommittee will come to an agreement on a Notice of Proposed Rulemaking in time to publish that proposal by the October 1, 2011 date contained in the settlement agreement described above.

DOE will advise subcommittee members of administrative matters related to the functions of the subcommittee before beginning. DOE will establish a meeting schedule based on the settlement agreement and produce the necessary documents so as to adhere to that schedule. While the negotiated rulemaking process is underway, DOE is committed to performing much of the same analysis as it would during a normal standards rulemaking process and to providing information and technical support to the subcommittee.

IV. Comments Requested

DOE requests comments on whether it should use negotiated rulemaking for its rulemaking pertaining to the energy efficiency of distribution transformers and the extent to which the issues, parties, and procedures described above are adequate and appropriate. DOE also requests comments on which parties should be included in a negotiated rulemaking to develop draft language pertaining to the energy efficiency of distribution transformers and suggestions of additional interests and/or stakeholders that should be represented on the subcommittee. All who wish to participate as members of the subcommittee should submit a request for nomination to DOE.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of intent to establish a subcommittee and negotiate a proposed rule.

Issued in Washington, DC, on August 5, 2011.

Kathleen Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–20541 Filed 8–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, and IO–720 Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to the products listed above. The existing AD currently requires replacing certain crankshafts. Since we issued that AD, Lycoming Engines discovered that the start date of affected engine models in Mandatory Service Bulletin (MSB) No. 569A, is incorrect. This proposed AD would correct that start date. We are proposing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

DATES: We must receive comments on this proposed AD by September 26, 2011.

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

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

For service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or on the Internet at *http://www.Lycoming.Textron.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; e-mail: *norman.perenson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On September 20, 2006, we issued AD 2006–20–09, Amendment 39–14778 (71 FR 57407, September 29, 2006), for Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, and IO–720 series reciprocating engines. That AD requires replacing certain crankshafts. That AD resulted from reports of 23 confirmed failures of similar crankshafts in Lycoming Engines 360 and 540 series reciprocating engines. We issued that AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

Actions Since Existing AD was Issued

Since we issued AD 2006–20–09, Lycoming Engines discovered that the March 1, 1997 start date of affected engine models in Mandatory Service Bulletin (MSB) No. 569A, is incorrect.

Relevant Service Information

We reviewed Lycoming Engines MSB No. 569A, dated April 11, 2006. That MSB describes procedures for replacing crankshafts listed by serial number in that MSB. We also reviewed Lycoming Engines Supplement No. 1 to MSB 569A, dated May 27, 2009. The supplement corrects the start date of affected engine models, to January 1, 1997.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2006–20–09. This proposed AD would change the start date of affected engine models, from March 1, 1997, to January 1, 1997.

Costs of Compliance

We estimate that this proposed AD would require no additional costs of compliance over those in the original AD, AD 2006–20–09, which are $60,384,000. This proposed AD carries over the original costs of compliance. We estimate that this proposed AD would affect 3,774 engines installed on airplanes of U.S. registry. Because the proposed AD compliance interval coincides with engine overhaul or other engine maintenance, we estimate no additional labor hours will be needed to comply with this proposed AD. Parts would cost about $16,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to be $60,384,000. Our estimate is independent of any possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–20–09, Amendment 39–14778 (71 FR 57407, September 29, 2006), and adding the following new AD:

Lycoming Engines (formerly Textron Lycoming): Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 26, 2011.

Affected ADs

(b) This AD supersedes AD 2006–20–09, Amendment 39–14778.

Applicability

(c) This AD applies to those Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, and IO–720 series reciprocating engines listed by engine model number and serial number in Table 1, Table 2, Table 3, or Table 4 of Lycoming Mandatory Service Bulletin (MSB) 569A, dated April 11, 2006, and those engines with crankshafts listed by crankshaft serial number in Table 5 of Lycoming MSB 569A, dated April 11, 2006. These applicable engines are manufactured new or rebuilt, overhauled, or had a crankshaft installed after January 1, 1997. These engines are installed on, but not limited to, the following aircraft:

Engine model	Manufacturer	Aircraft model
AEIO–360–A1B6	Moravan	Z242L Zlin
	Scottish Avia	Bulldog
	Valmet	Leko 70
AEIO–360–A1E6	Integrated Systems	Omega
IO–360–A1B6	Aircraft Manufacturing Factory	Mushshak
	Beech	C–24R Sierra or 200 Sierra
	Cessna	R–G Cardinal
	Korean Air	Chang Gong-91
	Partenavia	P–68C
	Saab	MFI–15 Safari, MFI–17 Supporter
	Scottish Avia	Bulldog
IO–360–A1B6D	Cessna	R–6 Cardinal
	Siai Marchetti	S–205
IO–360–A3B6	Mod Works	Trophy 212 Conversion
IO–360–A3B6D	Mooney	M20J–201
IO–360–B1G6	American	Blimp Spector 42
IO–360–C1C6	Piper Aircraft	PA–28–200R Arrow IV
	Ruschmeyer	MF–85
IO–360–C1D6	M.B.B.	Flamingo 223
	Rockwell	112
IO–360–C1E6	Piper	PA–34–200 Seneca I
IO–360–C1G6	Zeppelin	NT
IO–360–X178	Ly-Con	STC
(L)O–360–A1G6D	Beech	76 Duchess
(L)O–360–A1H6	Piper	PA–44 Seminole
O–360–A1F6	Cessna	177 Cardinal
O–360–A1F6D	Cessna	177 Cardinal
	Teal III	TSC 1A3
O–360–A1G6D	Beech	76 Duchess
O–360–A1H6	Piper	PA–44 Seminole
O–360–E1A6D	Piper	PA–44–180 Seminole
O–360–F1A6	Cessna	C–172RG Cutlass RG
AEIO–540–D4A5	Christen	Pitts S–2S, S–2B
	H.A.L.	HPT–32
	Siai-Marchetti	SF–260
	Slingsby	T3A Firefly
AEIO–540–L1B5	Extra-Flugzeugbau	Extra 300
	F.F.A.	FFA–2000 Eurotrainer
AEIO–540–L1D5	Apex	Apex
IO–540–AA1A5	Piper	602P Sequoia
IO–540–AB1A5	Cessna	C–182 Skylane
IO–540–AC1A5	Cessna	C–206 Stationair
IO–540–AE1A5	Robinson	R44
IO–540–C4B5	Aerofab	250 Renegade
	Avions Pierre Robin	HR100/250
	Bellanca	T–250 Aries
	Piper	Aztec C PA–23 ‘‘250’’, Aztec F
	Wassmer	WA4–21
IO–540–C4D5	S.O.C.A.T.A.	TB–20
IO–540–C4D5D	S.O.C.A.T.A.	TB–20 Trinidad
IO–540–D4A5	Piper	PA–24 260 Comanche
	Siai-Marchetti	SF–260
IO–540–D4B5	Cerva	CF–34 Guepard
IO–540–E1A5	Aero Commander	500–E
IO–540–E1B5	Aero Commander	500–U
	Poeschel	P–300
	Shrike	500–S
IO–540–J4A5	Piper	Aztec PA–23 ‘‘250’’
IO–540–K1A5	Aeronautica Agricula Mexicana	Quail
	Celair	Eagle
	Embraer	EMB–720 Minuano, EMB–721 Sertanejo
	Piper	PA–32–300 Cherokee Six
IO–540–K1A5D	Piper	PA–32–300
IO–540–K1B5	Evangel-Air	Evangel-Air
	Pilotus Britton-Norman	BN–2B Islander
	Transavara	T–300 Skyfarmer
IO–540–K1E5	Bellanca	Bellanca
IO–540–K1F5	Ted Smith	Aerostar 600
IO–540–K1G5	Embraer	EMB–720 Minuano
	Piper	Saratoga PA–32–300, Brave 300

Engine model	Manufacturer	Aircraft model
IO–540–K1G5D	Embraer	EMB–721 Sertanejo
	Piper	PA–32–300R Lance, SP PA–32–300R Saratoga
IO–540–K1H5	Seawind	Seawind
IO–540–K1J5	Piper	600A Aerostar
IO–540–K1J5D	Embraer	EMB–201 Ipanema
IO–540–K1K5	Piper	T35
IO–540–L1C5	Swearingen	SX300
IO–540–M1A5	Piper	PA–31–300 Navajo
IO–540–M1C5	King Engineering	Angel
IO–540–S1A5	Piper	601B Aerostar, 601P Aerostar
IO–540–T4A5D	General Aviation	Model 114
IO–540–T4B5	Commander	114B
IO–540–T4B5D	Rockwell	114
IO–540–V4A5	Aircraft Manufacturing Factory	Aircraft Manufacturing Factory
	Maule	MT–7–260, M–7–260
IO–540–W1A5	Maule	MX–7–235, MT–7–235, M7–235
IO–540–X160	Airship Management	Airship Management
IO–540–X170	Robinson	Robinson
O–540–A1A5	Helio	Military H–250
O–540–A1B5	Piper	PA–32 “250” Aztec, PA–24 “250” Comanche
O–540–A1C5	Piper	PA–24 “250” Comanche
O–540–A1D5	Piper	PA–24 “250” Comanche
O–540–A4D5	American Champion	American Champion
	Gomozig	Gomozig
	Avipro	Bearhawk
O–540–B1A5	Piper	PA–23 “235” Apache
O–540–B2B5	S.O.C.A.T.A.	235CA Rallye.
O–540–B2C5	Piper	PA–24 “235” Pawnee
O–540–B4B5	Embraer	EMB–710 Corioca
	Maule	MX–7–235 Star Rocket, M–6–235 Super Rocket, M–7–235 Super Rocket
	Piper	PA–28 “235” Cherokee
	S.O.C.A.T.A.	235GT Rallye, 235C Rallye
O–540–E4A5	Aviamilano	F–250 Flamingo
	Piper	PA–24 “260” Comanche
	Siai-Marchetti	SF–260, SF–208
O–540–E4B5	Britton-Norman	BN–2
	Piper	PA–32 “260” Cherokee Six
O–540–E4C5	Pilotus Britton-Norman	BN–2A–26 Islander; BN–2A–27 Islander; BN–2B–26 Islander II; BN–2A–21 Islander; BN–2A–Mark III–2 Trislander
O–540–F1B5	Robinson	R–44
O–540–G1A5	Piper	PA–25 “260” Pawnee
O–540–J1A5D	Maule	MX–7–235 Star Rocket, M–6–235 Super Rocket, M–7–235 Super Rocket
O–540–J3A5	Robin	R–3000/235
O–540–J3A5D	Piper	PA–28–236 Dakota
O–540–J3C5D	Cessna	R–182 Skylane
O–540–L3C5D	Cessna	TR–182 Turbo Skylane
TIO–540–AA1AD	Aerofab Inc	270 Turbo Renegade
TIO–540–AB1AD	S.O.C.A.T.A.	TC TB–21 Trinidad
TIO–540–AE2A	Piper	PA–46–350P Mirage
TIO–540–AF1B	Mooney	TLS M20M
TIO–540–AG1A	Commander Aircraft	112TC
TIO–540–AH1A	Piper	TC PA–32–301T TurboSaratoga
TIO–540–AK1A	Cessna	T182T Turbo Skylane
TIO–540–C1A	Piper	PA–23–250 Turbo Aztec
TIO–540–J2B	Piper	T–1020
TIO–540–U2A	Piper	700P Aerostar
TIO–540–W2A	Aero Mercantil	Gavilan
TIO–540–X136	Schweizer	Schweizer
TIO–540–X155	Cessna	T182 (AK1A)
IO–720–D1B	Embraer	EMB–400 Ipanema, IAR–821

Engine model	Manufacturer	Aircraft model
IO–720–D1C	Nauchang Piper	N5 PA–36–375 Brave

Unsafe Condition

(d) This AD results from Lycoming Engines discovering that the March 1, 1997 start date of affected engine models in Mandatory Service Bulletin (MSB) No. 569A, is incorrect. Lycoming Engines issued Supplement 1 to MSB No. 569A, dated May 27, 2009, which corrected the date of affected engine models, to January 1, 1997. We are issuing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

Compliance

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

Engines for Which No Action Is Required

(f) If your engine meets any of the following conditions, and you have not had the crankshaft replaced since meeting the condition, no further action is required:

(1) Engines that are in compliance with Lycoming MSB No. 552 (AD 2002–19–03) or MSB No. 553 (AD 2002–19–03 Table 3 or Table 5); or

(2) Engines that are in compliance with Lycoming MSB No. 566 AD (2005–19–11); or

(3) Engines that are in compliance with Lycoming Supplement No. 1 to MSB No. 566 (AD 2006–06–16); or

(4) Engines that are in compliance with the original issue of Lycoming MSB No. 569, MSB No. 569A, and Supplement 1 to MSB No. 569A.

(5) For engines identified in paragraphs (f), (g), (h), or (i) of this AD, owners or operators may make an entry in the AD status log required by 14 CFR 91.417(a)(2)(v) that this AD required no action for compliance.

(g) If Lycoming Engines manufactured new, rebuilt, overhauled, or repaired your engine, or replaced the crankshaft in your engine before January 1, 1997, and you have not had the crankshaft replaced, no further action is required.

(h) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine serial number (S/N), and Table 5 of MSB No. 569A, dated April 11, 2006, does not list your crankshaft S/N, no further action is required.

(i) For engine model TIO–540–U2A, S/N L–4641–61A, no action is required.

Engines for Which Action Is Required

(j) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine S/N, and Table 5 of MSB No. 569A, dated April 11, 2006, lists your crankshaft S/N, replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(1) The time of the next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AS, dated May 25, 2006; or

(2) The next separation of the crankcase, or

(3) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

(k) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, does not list your engine S/N, and Table 5 of MSB No. 569A does list your crankshaft S/N (an affected crankshaft was installed as a replacement), replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(1) The time of the next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AS, dated May 25, 2006; or

(2) The next separation of the crankcase, or

(3) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

Prohibition Against Installing Certain Crankshafts

(l) After the effective date of this AD, do not install any crankshaft that has a S/N listed in Table 5 of Lycoming MSB No. 569A, dated April 11, 2006, into any engine.

Alternative Methods of Compliance (AMOC)

(m) The Manager, New York Aircraft Certification Office, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19. AMOCs approved for AD 2006–20–09 are approved as AMOCs for this AD.

Related Information

(n) For more information about this AD, contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; e-mail: *norman.perenson@faa.gov.*

(o) For service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or on the Internet at *http://www.Lycoming.Textron.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts on August 5, 2011.

Peter A. White,

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

[FR Doc. 2011–20519 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0455; Airspace Docket No. 11–AEA–4]

Proposed Establishment of Class D and E Airspace; Frederick, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D and E airspace at Frederick, MD, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Frederick Municipal Airport. This action would enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before September 26, 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–2011–0455; Airspace Docket No. 11–AEA–04, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization,

Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

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 and be submitted in triplicate to the address listed above. Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0455; Airspace Docket No. 11–AEA–4.'' 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/.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. 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 D airspace extending upward from the surface to 2,800 feet MSL within a 5-mile radius of Frederick Municipal Airport. Class E surface area airspace, within a 5-mile radius of the airport and Class E airspace designated as an extension to Class D surface area. Controlled airspace is necessary for the new RNAV GPS standard instrument approach procedures developed for the airport and for continued safety and management of IFR operations at Frederick Municipal Airport.

Designations for Class D and E airspace areas are published in Paragraphs 5000, 6002 and 6004 respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document 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 D and E airspace at Frederick Municipal Airport, Frederick, MD.

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 will continue 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, and effective September 15, 2010, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AEA MD D Frederick, MD [NEW]

Frederick Municipal Airport, MD
(Lat. 39°25′03″ N., long. 77°22′28″ W.)

That airspace extending from the surface up to and including 2,800 feet MSL within a 5-mile radius of Frederick Municipal Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas

* * * * *

AEA MD E2 Frederick, MD [NEW]

Frederick Municipal Airport, MD
(Lat. 39°25′03″ N., long. 77°22′28″ W.)

That airspace extending from the surface up to and including 2,800 feet MSL within a 5-mile radius of the Frederick Municipal Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

AEA MD E4 Frederick, MD [NEW]

Frederick Municipal Airport, MD
(Lat. 39°25′03″ N., long. 77°22′28″ W.)

That airspace extending from the surface within 3.2 miles either side of the 036°

bearing from the airport extending from the 5 mile radius to 7.6 miles northeast of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on August 5, 2011.

Mark D. Ward,

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

[FR Doc. 2011–20504 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 110112021–1439–02]

RIN 0691–AA76

International Services Surveys: Amendments to the BE–120, Benchmark Survey of Transactions in Selected Services and Intangible Assets With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. The proposed BE–120 would include both definition changes and the addition of three schedules to better collect data in accordance with new international standards. In addition, this proposed rule would change the BE–120 survey title from ''Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons'' to ''Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons'' because the term ''intellectual property'' is better understood by U.S. respondents.

The proposed BE–120 survey is intended to cover transactions in selected services and intellectual property with foreign persons in benchmark years. In non-benchmark years, the universe estimates for these transactions would be derived from sample data reported on BEA's follow-on survey, which is the Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons (BE–125).

The data will be used by BEA to estimate the trade in services component of the U.S. International Transactions Accounts and other economic accounts compiled by BEA. The data are also needed by the U.S. government to monitor U.S. exports and imports of selected services and intellectual property; analyze their impact on the U.S. and foreign economies; support U.S. international trade policy for selected services and intellectual property; and assess and promote U.S. competitiveness in international trade in services. In addition, the data will improve the ability of U.S. businesses to identify and evaluate market opportunities.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. October 11, 2011.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For agency, select ''Commerce Department—all.''
- *E-mail: Christopher.Emond@bea.gov.*
- *Fax:* Chris Emond, Chief, Special Surveys Branch, (202) 606–5318.
- *Mail:* Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery:* Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving Section, M100, 1441 L Street, NW., Washington, DC 20005.

Please include in your comment a reference to RIN 0691–AA76 in the subject line.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent both to BEA, through any of the methods listed above, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commentator may be publicly accessible. Do not submit confidential business information or other sensitive or protected information. BEA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail *Christopher.Emond@bea.gov;* or phone (202) 606–9826.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR 801.10 to update certain reporting requirements for the BE–120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons. The proposed BE–120 would include both definition changes and the addition of three schedules to better collect data in accordance with new international standards. In addition, this proposed rule would change the title of the BE–120 survey and make other nonsubstantive format changes to the regulations.

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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Changes

The BE–120 survey as proposed in this rule would be conducted by BEA every five years beginning with transactions occurring in fiscal year 2011, under the authority provided by the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108), hereinafter, ''the Act,'' and would be mandatory for those U.S. persons that engage in the covered transactions in amounts that exceed the exemption level. The proposed BE–120 survey is intended to cover sales to foreign persons of any of the 36 types of services or intellectual property listed in proposed paragraph 801.10(c) in benchmark years. In non-benchmark years, the universe estimates for these transactions would be derived from sample data reported on BEA's follow-on survey, which is the Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons (BE–125). If this proposed rule is implemented, BEA would send the survey to potential respondents in March of 2012; responses would be due by June 30, 2012.

As proposed, the BE–120 will collect data on a mandatory basis for the same services categories that were covered by the previous version of the survey. However, some of the services categories that were included in the ''other selected services'' category in the prior survey will now be collected separately. These services include agricultural services; disbursements to fund production costs of motion pictures; disbursements to fund news-gathering costs and production costs of program material other than news; and waste treatment and depollution services.

In addition, the proposed survey would include three new schedules, Schedules D, E and F, to collect, on a voluntary basis, additional information related to intellectual property, contract manufacturing services, and merchanting services. The regulations at 15 U.S.C. 801.10(b)(ii) are amended to describe the three new schedules and to indicate the entity who is to complete each schedule and to provide instructions for the type of data to be reported. For example, Schedule D is to be completed by a U.S. person who engages in contract manufacturing services transactions with foreign persons. Schedule E is to be completed by a U.S. person who engages in intellectual property transactions with foreign persons. Schedule F is to be completed by U.S. persons who engage in merchanting services transactions with foreign persons. Responses from these schedules will help BEA determine whether respondents are able to supply data in a manner that would allow BEA to publish statistics on international services transactions in accordance with international economic accounting guidelines.

Finally, this proposed rule would change the BE–120 survey title from ''Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons'' to ''Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons'' because the term ''intellectual property'' is better understood by U.S. respondents.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as far as possible, the required data serve their intended purposes and are available from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In reaching decisions about the questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are available on respondents' books), and BEA's experience in previous benchmark, annual, and quarterly surveys.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, would conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), which provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA.

Data from the proposed survey are needed to monitor U.S. exports and imports of selected services and intellectual property; analyze their impact on the U.S. and foreign economies; compile and improve the U.S. international transactions, national income and product, and input-output accounts; support U.S. international trade policy for services and intellectual property; assess and promote U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The requirement will be submitted to OMB as a request to reinstate, with changes, a previously approved collection for which approval has expired under OMB Control Number 0608–0058.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The benchmark survey, as proposed, is expected to result in the filing of reports from approximately 15,000 respondents. Approximately 7,500 respondents would report either mandatory or voluntary data on the survey and approximately 7,500 would file exemption claims. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average twelve hours for the respondents that file mandatory or voluntary data. This estimate includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. For other responses, the estimate is two hours. Thus, the total respondent burden for the survey is estimated at 105,000 hours.

Comments are requested concerning: (a) 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; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (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.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent both to BEA, through any of the methods listed above, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. A

description of the changes proposed by this rule is described in the preamble and is not repeated here.

The proposed benchmark survey will be required from U.S. persons whose covered services and intellectual property transactions with foreign persons exceeded $2 million in sales or $1 million in purchases for fiscal year 2011. Although the survey does not collect data on total sales or other measures of the overall size of the businesses that respond to the survey, historically the respondents to the existing quarterly survey of transactions in the covered services and intellectual property and to the previous benchmark surveys have been comprised mainly of major U.S. corporations. Most small businesses would be excluded from responding to the survey because the exemption levels far exceed the threshold defined for a business to be considered ''small'' under the Small Business Administration's size standards. Any small businesses that may be required to report would likely have engaged in only a small number of transactions covered by this survey and so the burden on them would be minimal. BEA estimates that the burden on small entities that may be required to report is 2 hours per respondent.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: July 15, 2011.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p.86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Revise § 801.10 to read as follows:

§ 801.10 Rules and regulations for the BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

The BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, will be conducted covering fiscal year 2011 and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in section 801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–120 survey are given in paragraphs (a) through (c) of this section. More detailed instructions and descriptions of the individual types of transactions covered are given on the report form itself.

(a) The BE–120 survey consists of two parts and six schedules. Part I requests information needed to contact the respondent and the reporting period. Part II requests information needed to determine whether a report is required and information about the reporting entity. Each of the six schedules covers one or more types of transactions and is to be completed only if the U.S. reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who must report*—(1) *Mandatory reporting.* A BE–120 report is required from each U.S. person that had sales to foreign persons that exceeded $2 million during the fiscal year covered of any of the types of services or intellectual property listed in paragraph (c) of this section, or had purchases from foreign persons that exceeded $1 million during the fiscal year covered of any of the types of services or intellectual property listed in paragraph (c) of this section. Because the reporting threshold ($2 million for sales and $1 million for purchases) applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed records search.

(ii) U.S. persons that file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE–120 and all applicable schedules. The total values of transactions applicable to schedules A, B, and C are to be entered in the appropriate column(s) and, except for sales of merchanting services, these amounts must be distributed among the countries involved in the transactions. For sales of merchanting services, the data are not required to be reported by individual foreign country, although this information may be provided voluntarily. Schedule D is to be completed by a U.S. person who engages in contract manufacturing services transactions with foreign persons. Schedule E is to be completed by a U.S. person who engages in intellectual property transactions with foreign persons. Schedule F is to be completed by U.S. persons who engage in merchanting services transactions with foreign persons.

(iii) Application of the exemption levels to each covered transaction is indicated on the schedule for that particular type of transaction. It should be noted that an item other than sales or purchases may be used as the measure of a given type of transaction for purposes of determining whether the threshold for mandatory reporting of the transaction is exceeded.

(2) *Voluntary reporting.* If, during the fiscal year covered, the U.S. person's total transactions (either sales or purchases) in any of the types of transactions listed in paragraph (c) of this section are $2 million or less for sales or $1 million or less for purchases, the U.S. person is requested to provide an estimate of the total for each type of transaction. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search. Because the exemption threshold applies separately to sales and purchases, the voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(3) Any U.S. person that receives the BE–120 survey form from BEA, but is not subject to the mandatory reporting requirements and chooses not to report voluntarily, must file an exemption claim by completing pages one through five of the BE–120 survey and returning it to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(c) *Covered types of services.* The services covered by the BE–120 include sales and purchases for the following transactions (transaction types 1–8 include rights to use, rights to distribute, or outright sales or purchases): (1) Rights related to industrial processes and products; (2) rights related to books, CD's, digital music, etc.; (3) rights related to trademarks; (4) rights related to performances and events pre-recorded on motion picture film and TV tape (including digital recordings); (5) rights related to broadcast and recording of live performances and events; (6) rights related to general use computer software; (7) business format franchising fees; (8) other intellectual property; (9) accounting, auditing, and bookkeeping

services; (10) advertising services; (11) auxiliary insurance services; (12) computer and data processing services; (13) construction services; (14) data base and other information services; (15) educational and training services; (16) engineering, architectural, and surveying services; (17) financial services (purchases only); (18) industrial engineering services; (19) industrial-type maintenance, installation, alteration, and training services; (20) legal services; (21) management, consulting, and public relations services (includes expenses allocated to/from a parent and its affiliates); (22) merchanting services; (23) mining services; (24) operational leasing services; (25) trade-related services, other than merchanting services; (26) performing arts, sports, and other live performances, presentations, and events; (27) premiums paid on primary insurance (payments only); (28) losses recovered on primary insurance; (29) research and development services; (30) telecommunications services; (31) agricultural services; (32) contract manufacturing services; (33) disbursements to fund production costs of motion pictures; (34) disbursements to fund news-gathering costs and production costs of program material other than news; (35) waste treatment and depollution services; and (36) other selected services.

* * * * *

[FR Doc. 2011–20418 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0698]

RIN 1625–AA09

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of two New Jersey Department of Transportation (NJDOT) bridges: The Route 30/Abescon Boulevard Bridge across Beach Thorofare, NJICW mile 67.2 and the US 40–322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0, both at Atlantic City, NJ. The proposed changes will alter the dates that these bridges are allowed to have delayed openings or remain in the closed position to accommodate heavy volumes of vehicular traffic due to the annual July 4th fireworks shows and the annual Air Show at Bader Field.

DATES: Comments and related material must reach the Coast Guard on or before October 11, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0698 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0698), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2011–0698'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0698'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets

in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

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

Basis and Purpose

NJDOT has requested a change in the operation regulations of the Route 30/Abescon Boulevard Bridge across Beach Thorofare, NJICW mile 67.2 and the US 40–322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0, both at Atlantic City, NJ. The Atlantic City July 4th fireworks show and the Air Show at Bader Field are annual events held in Atlantic City and heavy volumes of vehicular traffic transit across both bridges to attend them. The Coast Guard proposes to allow the above mentioned bridges to remain in the closed position from 9:40 p.m. through 11:15 p.m. on July 4th or on July 5th should inclement weather prevent the fireworks event from taking place as planned. The Coast Guard also proposes to allow the above mentioned bridges to open every two hours on the hour from 10 a.m. through 4 p.m. and to remain in the closed position from
4 p.m. through 8 p.m. on the third or fourth Wednesday of every August. The exact dates of the closures will be published locally in the Local Notice to Mariners and Broadcast Notice to Mariners.

The Route 30/Abescon Boulevard Bridge is a bascule drawbridge with a vertical clearance of 20 feet above mean high water in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.733(e) and was last amended in April 2009. The US 40–322 (Albany Avenue Bridge) is a bascule drawbridge with a vertical clearance of 10 feet above mean high water in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.733(f) and was last amended in April 2009.

Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.733(e) for the Route 30/Abescon Boulevard Bridge, mile 67.2 across Beach Thorofare and 33 CFR 117.733(f) for the US 40–322 (Albany Avenue Bridge), mile 70.0 across Inside Thorofare. The proposed amendments would allow both bridges to remain in the closed position from 9:40 p.m. through 11:15 p.m. on July 4 or on July 5 should inclement weather prevent the fireworks event from taking place as planned; to open every two hours on the hour from 10 a.m. until 4 p.m. and to remain in the closed position from 4 p.m. until 8 p.m. on the third or fourth Wednesday of every August.

Vessels that are able to transit under the bridges without openings may do so at any time. The Atlantic Ocean is an alternate route for vessels unable to pass through the bridges in the closed positions. Both bridges will be able to open for emergencies.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3). The Office of Management and Budget has not reviewed it under those Orders.

The proposed changes are expected to have minimal impact on mariners due to the short duration that the drawbridges will be maintained in the closed position and have delayed openings. Both events have been observed in past years with little to no impact on marine traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of vehicular traffic before, during, and after the events.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. These proposed rules would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit under any of the bridges between the hours of delayed openings or closures on either event day.

This action will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge closures can minimize delay. Vessels that can safely transit under the bridges may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lindsey Middleton, Bridge Management Specialist, Fifth Coast Guard District, (757) 398–6629 or *Lindsey.R.Middleton@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction 44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.733(e) and (f) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(e) The draw of the Route 30 Bridge across Beach Thorofare, mile 67.2 at Atlantic City, shall open on signal if at least four hours of notice is given; except that:

(1) From April 1 through October 31, from 7 a.m. to 11 p.m. the draw need only open on the hour.

(2) On July 4, the draw need not open from 9:40 p.m. until 11:15 p.m. to accommodate the annual July 4th fireworks show. Should inclement weather prevent the fireworks event from taking place as planned, the draw need not open from 9:40 p.m. until 11:15 p.m. on July 5th to accommodate the annual July 4th fireworks show.

(3) On the third or fourth Wednesday of August, the draw will open every two hours on the hour from 10 a.m. until 4 p.m. and need not open from 4 p.m. until 8 p.m. to accommodate the annual Air Show.

(f) * * *

(3) On July 4, the draw need not open from 9:40 p.m. until 11:15 p.m. to accommodate the annual July 4th fireworks show. Should inclement weather prevent the fireworks event from taking place as planned, the draw need not open from 9:40 p.m. until 11:15 p.m. on July 5th to accommodate the annual July 4th fireworks show.

(4) On the third or fourth Wednesday of August, the draw will open every two hours on the hour from 10 a.m. until 4 p.m. and need not open from 4 p.m. until 8 p.m. to accommodate the annual Air Show.

* * * * *

Dated: August 2, 2011.

William D. Lee,

Rear Admiral, United States Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 2011–20499 Filed 8–11–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[EPA–HQ–OAR–2009–0837; FRL–9450–6]

RIN 2060–AQ06

Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct certain portions of the Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing rule. EPA published in the **Federal Register** of March 28, 2011 (76 FR 17288), a final rule that amends the Agency's Protocol Gas Verification Program (PGVP) and the minimum competency requirements for Air Emission Testing Bodies (AETBs), and makes a number of other changes to the regulation. After the final rule was published, it was brought to our attention that there are some incorrect and incomplete statements in the preamble, some potentially confusing statements in a paragraph of the rule text, and the title of Appendix D to Part 75 was inadvertently changed and is incorrect.

DATES: Written comments must be received by September 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0837, by mail to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. 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: John Schakenbach, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9158, e-mail at *schakenbach.john@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/airmarkets.*

SUPPLEMENTARY INFORMATION: This document proposes to take action on certain portions of the Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing rule. We have published a direct final rule to amend the March 28, 2011 final regulation (76 FR 17288) by removing two inaccurate preamble statements, correcting one incomplete preamble statement, clarifying the text of § 75.4(e), and correcting the title of Appendix D to Part 75 in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a non-controversial action and anticipate no adverse comment.

We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: August 3, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–20450 Filed 8–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9451–2]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Deletion of the Pasley Solvents & Chemicals, Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA, Region 2, is issuing a Notice of Intent to Delete the Pasley Solvents & Chemicals, Inc Superfund Site (Site) located in the Town of Hempstead, Nassau County, New York, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an Appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of New York, through the Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: henry.sherrel@epa.gov.*
- *Fax:* To the attention of Sherrel Henry at 212–637–3966.

Mail: Sherrel Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Docket's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider CBI or otherwise protected through *http://www.regulations.gov* or via e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via e-mail, your e-mail address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD–ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for

clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available Docket materials can be viewed electronically at *http://www.regulations.gov* or obtained in hard copy at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866.

Phone: 212–637–4308.

Hours: Monday to Friday from 9 a.m. to 5 p.m.

Information for the Site is also available for viewing at the Site Administrative Record Repositories located at: Levittown Library, 1 Bluegrass Lane, Levittown, New York 11756.

Tel. (516) 731–5728.

Hours: Monday through Friday: 9 a.m. through 9 p.m.

Saturday: 9: a.m. through 5 p.m.

FOR FURTHER INFORMATION CONTACT: Sherrel D. Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, NY, NY 10007–1866, (212) 637–4273, by electronic mail at *henry.sherrel@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion. If we receive no adverse comment(s) on this Notice of Intent to Delete or the direct final Notice of Deletion, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Deletion Notice based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion, which is located in the ''Rules'' section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 5, 2011.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

[FR Doc. 2011–20588 Filed 8–11–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 156
Friday, August 12, 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

August 8, 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: Importation of Plants for Planting; Establishing a Category for Plants for Planting Not Authorized for Importation.

OMB Control Number: 0579–New.

Summary of Collection: The United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), is responsible for preventing the entry of plant diseases or insect pests from entering into the United States, preventing the spread of pests and noxious weeds not widely distributed into the United States, and eradicating those imported pests when eradication is feasible. Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. APHIS is amending the regulations in the final rule to establish a new category of regulated articles in the regulations governing the importation of nursery stock, also known as plants for planting. This category will list taxa for plants for planting whose importation is not authorized pending pest risk analysis.

Need and Use of the Information: APHIS will collect the following information before a Pest Risk Assessment can be prepared: (1) A description and/or map of the specific locations(s) of the areas in the exporting country where the plant, plant parts, or plant products are produced; (2) Scientific name (including genus, species, and author names) and taxonomic classification of arthropods, fungi, bacteria, nematodes, viruses, viroids, mollusks, phytoplasmas, spiroplasmas, etc., attacking the crop; and (3) Plant part attacked by each pest, pest life stages associated with plant part attacked, and location of pest (in, on, or with commodity).

Description of Respondents: Business or other for-profits; Federal Government.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 28.

Animal and Plant Health Inspection Service

Title: Citrus Canker, Citrus Greening, and Asian Citrus Psylid; Interstate Movement of Regulated Citrus Nursery.

OMB Control Number: 0579–0369.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture, either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pest (such as citrus canker (CC)) new to or widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) amended the regulations governing the interstate movement of regulated articles from areas quarantined for CC, citrus greening (CG) and/or Asian citrus psylid (ACP) to allow the movement of regulated nursery stock under a certificate to any areas within the United States. In order to be eligible to move regulated nursery stock, a nursery must enter into a compliance agreement with APHIS that specifies the condition under which the nursery stock must be grown, maintained, and shipped.

Need and Use of the Information: APHIS will collect information using forms, PPQ 519, Compliance Agreement, PPQ 530, Federal Certificate, PPQ 540, Limited Permit; Label Requirement and Records of Inspection and Treatments for APHIS Review. The information collected is necessary to provide a degree of relief from existing prohibitions and restrictions on the interstate movement of such articles to affected producers in areas quarantined for CC, CG, and/or ACP, while continuing to prevent the artificial spread of these diseases within the United States. Failing to collect this information, or if this information was collected less frequently, could cause a severe economic loss to the citrus industry.

Description of Respondents: Business or other for-profits.

Number of Respondents: 621.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,900.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–20487 Filed 8–11–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 8, 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.

Farm Service Agency

Title: Representations for CCC and FSA Loans and Authorization to File a Financing Statement and Related Documents.

OMB Control Number: 0560–0215.

Summary of Collection: Commodity Credit Corporation and the Farm Service Agency (FSA) programs require loans be secured with collateral. The security interest is created and attaches to the collateral when: (1) Value has been given, (2) the debtor has rights in the collateral or the power to transfer rights in the collateral, and (3) the debtor has authenticated a security agreement that provides a description of the collateral. In order to perfect the security interest in collateral, a financing statement must be filed according to a State's Uniform Commercial Code. The revised Article 9 of the Uniform Commercial Code deals with secured transaction for personal property. The revised Article 9 affects the manner in which the CCC and FSA, as well as any other creditor, perfect and liquidate security interests in collateral.

Need and Use of the Information: FSA will collect information using form CCC–10. The information obtained on CCC–10 is needed to not only obtain authorization from loan applicants to file a financing statement without their signature, but also to verify the exact legal name and location of the debtor. If this information is not collected, CCC and FSA will not be able to disburse loans because a security interest would not be perfected.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 55,500.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 32,357.

Farm Service Agency

Title: County Committee Election.

OMB Control Number: 0560–0229.

Summary of Collection: As specified in the 2002 Farm Bill, the Secretary is required to prepare a report of election that includes, among other things, ''the race, ethnicity and gender of each nominee, as provided through the voluntary self-identification of each nominee''. The information will be collected using form FSA–669–A, ''Nomination Form for County FSA Committee Election''. Completion of the form is voluntary.

Need and Use of the Information: FSA will collect information on race, ethnicity and gender of each nominee as provided through the voluntary self-identification of each nominee agreeing to run for a position. The information will be sent to Kansas City for preparation of the upcoming election. The Secretary will review the information annually. If the information is not collected in any given year, the Secretary would not be able to prepare the report as required by the regulations.

Description of Respondents: Individuals or households.

Number of Respondents: 10,000 .

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,700.

Farm Service Agency

Title: Volunteer Programs.

OMB Control Number: 0560–0232.

Summary of Collection: Section 1526 of the Food and Agriculture Act of 1981 (7 U.S.C. 2272) permits the Secretary of Agriculture to establish a program to use volunteers to perform a wide range of activities to carry out the programs of or supported by the Department of Agriculture. 5 U.S.C. 3111 grants agencies the authority to establish program designed to provide educationally related work assignments for students in non-pay status. Documentation of service performed without compensation by persons who do not receive Federal appointment is required by Office of Personnel Management (OPM). While serving as a Farm and Foreign Agriculture Service volunteer each individual is subject to the same responsibilities and guidelines for conduct to which Federal employees are expected to adhere. These program(s) will provide a valuable service to the agencies while allowing the participants to receive training, supervision and work experience.

Need and Use of the Information: Applicant accepted for the Volunteer Programs will complete the ''Service Agreement and Attendance Record''. The Agency will use the recording information to respond to the Department of Agriculture and OPM request for information on Agency Volunteers. Without the information, the Farm Service Agency would be unable to document service performed without compensation by persons in the program.

Description of Respondents: Individuals or households.

Number of Respondents: 60.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 30.

Farm Service Agency

Title: Transfer of Farm Records Between Counties.

OMB Control Number: 0560–0253.

Summary of Collection: Most Farm Service Agency (FSA) programs are administered on the basis of ''farm''. For program purposes, a farm is a collection of tracts of land that have the same owner and the same operator. Land with different owners may be considered to be a farm if all the land is operated by one person and additional criteria are met. A farm is typically administered in the FSA county office where the farm is physically located. A farm transfer can be initiated if the farm is being transferred back to the county where the farm is physically located, the principal dwelling on the farm operator has changed, a change has occurred in the operation of the land, or there has been

a change that would cause the receiving administrative county to be more accessible. Form FSA–179, ''Transfer of Farm Record Between Counties,'' is used as the request for a farm transfer from one county to another initiated by the producer.

Need and Use of the Information: The information collected on the FSA–179 is collected only if a farm transfer is being requested and is collected in a face-to-face setting with county office personnel. The information is used by county office employees to document which farm is being transferred, what county it is being transferred to, and why it is being transferred. Without the information county offices will be unable to determine whether the producer desires to transfer a farm.

Description of Respondents: Farms.

Number of Respondents: 23,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 26,833.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–20488 Filed 8–11–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino and Kaibab National Forests, Arizona, Four-Forest Restoration Initiative

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; Correction.

SUMMARY: On January 25, 2011, the Notice of Intent (NOI) to prepare an environmental impact statement (EIS) was published in the **Federal Register** (76 FR 4279–4281). From January, 2011 to June, 2011, six public meetings and workshops were held for the purposes of receiving comments and recommendations that would inform the development of a refined proposed action. As a result, the Forest Service is revising the NOI document, **Federal Register** of January 25, 2011 (76 FR 4279–4281) to read as follows:

Revision: The Forest Service is preparing an environmental impact statement (EIS) that proposes to conduct restoration activities on approximately 600,000 acres on the Coconino NF and Kaibab NF. Of this total, approximately 361,379 acres would be treated on the Coconino NF and 233,991 acres would be treated on the Kaibab NF. Restoration actions would be focused on the Flagstaff district with fewer acres included on the Mogollon Rim and Red Rock districts of the Coconino NF. On the Kaibab NF, activities would occur on the Williams and Tusayan districts. The objective of the project is to re-establish forest structure, pattern and composition, which will lead to increased forest resiliency and function. Resiliency increases the ability of the ponderosa pine forest to survive natural disturbances such as insect and disease, fire and climate change (FSM 2020.5). This project is expected to put the project area on a trajectory towards comprehensive, landscape-scale restoration with benefits that include improved vegetation biodiversity, wildlife habitat, soil productivity, and watershed function.

DATES: Comments concerning the scope of the analysis must be received by August 26, 2011. The draft environmental impact statement is expected by January of 2012 and the final environmental impact statement is expected in the summer of 2012.

ADDRESSES: Send written comments to Coconino National Forest, Attention: 4FRI, 1824 S. Thompson Street, Flagstaff, Arizona 86001. Comments may also be sent via e-mail to *4FRI_comments@fs.fed.us,* or via facsimile to (928) 527–3620.

FOR FURTHER INFORMATION CONTACT: Henry Provencio, 4 FRI Team Leader at (928) 226–4684 or via e-mail at *hprovencio@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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Extensive research has demonstrated that current ponderosa pine forests of the Southwest are greatly altered in terms of forest structure, density, and ecological function. Most pine forests in the Southwest are at much higher risk of high intensity and severe fire than they were prior to European settlement (Covington 1993, Moore *et al.* 1999). A century ago the pine forests had widely-spaced large trees with a more open, herbaceous forest floor (Cooper 1960). These conditions were maintained by fairly frequent low-severity surface fires that did not kill the large trees (Fiedler *et al.* 1996). These fires occurred every 2 to 21 years and maintained an open canopy structure (Moir *et al.* 1997). Fire suppression, cattle grazing, timber production, and general human habitation in and near the forests over the last 100 years interrupted fire's natural role in these fire-adapted ponderosa pine forests. As a result, the forests have shifted from naturally open conditions to high densities of small diameter trees (Covington and Moore 1994) dramatically increasing the size and severity of wildland fires (Swetnam and Betancourt 1998). The forests have become less resilient to natural disturbances and are vulnerable to large-scale disturbances such as changing climatic conditions (drought), fire, insect, and disease.

Purpose and Need for Action

In contrast to having a ponderosa pine ecosystem consisting of groups of trees with an open tree canopy density mixed with interspaces, approximately 75 percent of the ponderosa pine forest type within the project area has a moderately closed to closed tree canopy density. An open tree canopy mixed with interspaces which mimic historical spatial patterns and provide for tree regeneration and the development of grass and forbs are lacking. There is a need to use management strategies that promote tree regeneration and understory vegetation. There is a need to move towards the historic range of variability for tree canopy density and patterns of tree groups and interspaces. Forest resiliency and diversity is dependent on the distribution of age and size classes. Currently, over 50 percent of the project area lacks age and size class diversity and is in an even-aged structure. The desired condition is to have a forest structure that represents all age classes necessary for a sustainable balance of regeneration, growth, mortality and all age classes necessary for a sustainable balance of regeneration, growth, mortality and decomposition. There is a need to implement un-even aged management strategies where appropriate. In goshawk habitat, habitat components such as an intermix of vegetation structural stages are lacking or limited in most stands.There is a need to manage for a balanced interspersion of age classes in goshawk foraging and PFA/nest stand habitat. Forest structure in Mexican spotted owl (MSO) habitat has an excess of the smaller size classes (12″ to 18-) and is deficit in trees 18″ to 24″ dbh in restricted habitat and in target/threshold, a component of restricted habitat. There is a need to implement uneven-aged management strategies and manage for high-density, relatively uneven-aged stands in MSO restricted habitat, including target/threshold habitats.

In both gohsawk and MSO habitat, stand conditions are on a trajectory

towards density-related mortality. The desired condition is to improve forest health by reducing the potential for density-related mortality and move towards forest plan desired conditions for snags and course woody debris. There is a need to reduce stand densities in all habitats except MSO restricted and target threshold.

Approximately 25 percent to 35 percent of the project area has some level of infection ranging from light to extreme. The desired condition is to have a varied level of mistletoe across the landscape that is comparable with historic reference conditions. There is a need to use management strategies that would reduce stand densities in order to reduce (but not eliminate) the level of dwarf mistletoe infection.

Vegetation diversity throughout the project area has declined (USDA 2009). A lack of fire, which ultimately allowed for increased stand densities, has allowed Gambel oak to become overtopped by fast growing ponderosa pine. The desired condition is to develop and maintain a variety of oak size classes and forms, where they occur, that range from shrubby thickets and pole-sized clumps to large trees across the landscape. There is a need to use management strategies that stimulate new growth and maintain growth in large diameter trees.

There are approximately 7,700 acres of aspen in the project area. Aspen is dying or rapidly declining on both forests due to the combined effects of conifer encroachment, browsing, insect, disease, severe weather events, and lack of fire disturbance (USDA 2008 2009). The desired condition is to maintain and/or regenerate aspen. Where possible, there is a need to stimulate growth and increase individual recruitment of aspen. On the Coconino NF, grasslands have decreased from approximately 8 percent to percent since historic conditions (generally pre-1900). On the Kaibab NF, grasslands have decreased from approximately 15 to 7 percent (USDA 2008) (USDA 2009). The desired condition is to move towards the historic range of variability of tree canopy cover that ranges from 0 to 9 percent. Fire should function as a natural disturbance across the landscape without causing loss to ecosystem function or to human safety, lives, and values. There is a need to reduce (and in some cases remove) tree encroachment which has reduced the size and function of landscapes that were historically grasslands. Big sage and ponderosa pine co-occur on approximately 6,094 acres of the Tusayan district portion of the project area. The desired condition for the pine/sage understory community is a shifting mosaic of sagebrush with a mix of age classes averaging from 3 to 5 percent cover. With other shrub canopies combined, the percent cover would average around 9 to 14 percent under a 25 to 30 percent canopy of ponderosa pine. The mosaic pattern would be largely regulated by low intensity fires. On approximately 40 percent of the pine-sage cover type, there is a need to retain vegetation age class diversity in big sage and promote a shifting mosaic of shrub cover.

Approximately 41 percent of the project area has the potential to sustain crown fire and about 58 percent has the potential for surface fire. Dense forest conditions (numerous trees with interlocking crowns) are common within the project area and would support active crown fire. Even without crown fire, a high intensity surface fire burning though this area could scorch the canopy sufficiently to cause widespread mortality.The current fire return interval is approximately 43 years, about four times longer than the desired fire return interval which is between 2 and 21 years. The desired condition is to have fire, as a disturbance process, maintain a mosaic of diverse native plant communities. No more than 10 percent of the analysis area should be prone to crown fire. When crown fire does occur, it would be mostly passive crown fire, occurring in single trees, groups, or clumps, or areas where there had been mortality (wind throw, insects, etc.). There is a need to reduce the potential for crown and high intensity surface fire.

Across the entire analysis area, 75 percent is currently rated as condition class 3 which indicates the fire regime is significantly departed from historical ranges. In a condition class 3, the risk of losing key ecosystem components is high. Fire frequencies have departed from historical frequencies by multiple return intervals resulting in dramatic alterations to fire size, intensity, severity, landscape patterns, and/or vegetation attributes. The desired condition is to have 99 percent of the analysis area in FRCC 1. There is a need to reduce the percent of area in FRCC 3 and move the fire regimes towards FRCC 1.

Springs and seeps play an important role on the landscape for hydrological function of watersheds and they are very important for wildlife and plant diversity. Fifty-one developed springs on the Coconino NF are not functioning at or near potential and 27 springs on the Kaibab NF have reduced function. The desired condition is to have the necessary soil, water, and vegetation attributes to be healthy and functioning at or near potential. Ephemeral streams are important for hydrological function of watersheds and provide important seasonal habitat for a variety of wildlife, in particular, migratory birds and dispersing amphibians. On the Coconino NF, approximately 36 miles of channels are heavily eroded with excessive bare ground, denuded vegetation, and head cuts. Of the total miles, approximately 6 miles are riparian streams and 30 miles are non-riparian streams. The Kaibab NF has approximately 7 miles of channels in this condition and all are non-riparian reaches. The desired condition is to restore the functionality of both springs and ephemeral streams. On all springs and streams and channels, there is a need to return fire, a natural disturbance processes, to the system.

Both forests have identified the needed road system for public and administrative motorized use through the Travel Management Rule (TMR) process. As a precursor to the TMR process, the Coconino NF identified roads that should be closed to public travel, decommissioned, or considered for other uses because they were no longer needed to meet resource management objectives (USDA 2010). A review of 2010 data indicates there is a need to decommission approximately 941 miles of existing system and unauthorized roads on the Coconino NF. Similar to the Coconino process, the Kaibab NF identified resource risks and access benefits associated with all roads. A review of Kaibab NF data indicates approximately 170 miles of unauthorized roads are recommended for decommissioning. The desired condition is to have soils in satisfactory condition so that the soil can resist erosion, recycle nutrients and absorb water. There is a need to decommission the roads that have been identified.

In addition to the need for decommissioning roads, there is a need to have adequate access to the project area for implementation. There is a need to upgrade road segments which have resource or health and human safety concerns, construct temporary roads that could be used for access, and temporarily open existing closed roads. Once the project is completed, there is a need to decommission the temporary roads and closed roads.

Proposed Action

In response to the purpose and need, the Coconino and Kaibab National Forests propose to conduct approximately 595,370 acres of restoration activities (within the 988,764 acre project area) over approximately 10

years or until objectives are met. Approximately 20,000 to 30,000 acres of vegetation would be treated annually and up to 60,000 acres prescribed burned annually across the two forests. Restoration activities would: (1) Mechanically cut trees and prescribe burn on approximately 389,993 aces, (2) cut trees by hand and prescribe burn on slopes greater than 40 percent on approximately 99 acres, (3) prescribe burn only on approximately 205,278 acres, (4) decommission 941 miles of roads designated ''closed'', (5) decommission 170 miles of unauthorized roads, (6) construct 46 miles of temporary roads for haul access and obliterate when treatments are finished, (7) reconstruct 27 miles of existing open roads for natural resource, health and human safety concerns, (8) open 183 miles of existing closed roads in order to conduct treatments and close and rehabilitate as needed when treatments are finished, (9) restore 78 springs, (10) restore 43 miles of ephemeral channels, and (11) construct 82 miles of protective (aspen and springs) fencing.

An old tree and large tree implementation strategy, that are integral to the proposed action, are included as appendices B and C in the proposed action document. Forest plan amendments are integral to the proposed action. Three non-significant forest plan amendments would be required on the Coconino NF to implement the proposed action. One non-significant forest plan amendment would be required on the Kaibab NF. The proposed amendments are located at appendix F in the proposed action document.

Possible Alternatives

A full range of alternatives to the proposed action, including a no-action alternative, will be considered. The no-action alternative represents no change and serves as the baseline for the comparison among the action alternatives.

Responsible Official

The Responsible Officials are the Coconino Forest Supervisor and Kaibab Forest Supervisor.

Nature of Decision To Be Made

Given the purpose and need of the project, the forest supervisors will review the proposed action, other alternatives and the environmental consequences in order to make the following decisions including determining: (1) Whether to select the proposed action or another alternative; (2) the location, design, and scheduling of proposed restoration activities; (3) the estimated products, if any, to be made available from the project; (4) mitigation measures, monitoring requirements and adaptive management actions; and (5) whether forest plan amendments are needed.

Scoping Process

This corrected notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Two open houses are planned during the comment period. The first open house will be held on August 18, 2011 at the Williams Ranger District, 742 South Clover Road, Williams, Arizona, from 4 p.m. to 7:30 p.m. The second open house will be held on August 20, 2011 at the Coconino National Forest Supervisor's Office, 1824 S. Thompson Street, Flagstaff, AZ 86101, from 10 a.m. to 2 p.m. Please contact Paula Cote at (928) 226–4686 for additional information.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: August 5, 2011.

M. Earl Stewart,

Forest Supervisor, Coconino National Forest.

[FR Doc. 2011–20496 Filed 8–11–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Pohick Creek Watershed Dam No. 8, Fairfax County, Virginia; Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations [40 CFR part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Pohick Creek Watershed Dam No. 8, Fairfax County, Virginia.

FOR FURTHER INFORMATION CONTACT: John A. Bricker, State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone (804) 287–1691, E-Mail *Jack.Bricker@va.usda.gov.*

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John A. Bricker, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John A. Bricker at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

John A. Bricker,

State Conservationist.

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials].

[FR Doc. 2011–20585 Filed 8–11–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Prepare an Environmental Impact Statement for the Henrys Fork Salinity Control Project Plan, Sweetwater and Uinta Counties, WY; Daggett and Summit Counties, UT

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4321–4370d (NEPA), as implemented by the Council of Environmental Quality regulations (40 CFR parts 1500–1508), the Natural Resources Conservation Service (NRCS) announces their intent to prepare an Environmental Impact Statement (EIS) for the Henrys Fork Salinity Control Project Plan (SCPP). The NRCS will be the lead agency. A public and agency scoping meeting to discuss issues, actions, alternatives and impacts as well as to solicit input verbally and in writing will be conducted. The lead and cooperating agencies invite and encourage agencies and the public to provide written comments on the proposed SCPP throughout the scoping process to ensure that all relevant environmental issues are considered.

DATES: *Meeting Date:* A public and agency scoping meeting will be held at 6:30 p.m., Tuesday, August 30, 2011. *Comment Date:* Persons or organizations wishing to submit scoping comments should do so no later than September 30, 2011.

ADDRESSES: *Meeting Address:* The public and agency scoping meeting will be held at McKinnon Elementary School, 10 Old Highway 414 # 10A, McKinnon, Wyoming.

Comment submissions: Written comments on the scope of the EIS for the Henrys Fork SCPP may be submitted using any of the following methods:

Government-wide rulemaking Web site: http://www.regulations.gov. Follow the instructions for sending comments electronically.

Mail: Attention: Rachel Bundschuh, Natural Resources Conservation Service, 508 North Broadway Avenue, Riverton, Wyoming 82501–3458.

E-mail: rachel.bundschuh@wy.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jeff Lewis of the NRCS at (307) 787–3211, 100 East Sage Street, P.O. Box 370, Lyman, Wyoming 82937–0370, E-mail: *jeff.lewis@wy.usda.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: The ''Irrigation System Improvements'' alternative assumes a salinity control project will be implemented. Existing financial and technical assistance programs will continue to operate as they have in the past. However, the ''Irrigation System Improvements'' alternative will increase the available Federal funds for assistance. It is assumed that on-farm irrigation water management will improve due to an increase in technical assistance provided by the NRCS field office.

Through implementation of a SCPP, on-farm irrigation application system improvements will occur at an accelerated rate as producers voluntarily sign up for improved irrigation systems. It is estimated that through this alternative 74 percent of the irrigated acres in the project area will have improved irrigation systems. Most of the surface irrigation systems will be converted to side roll, center pivot, and pod sprinkler systems. The remaining 26 percent of irrigated acres will continue as unimproved irrigation systems.

A limited amount of on-farm delivery ditches that transport irrigation water from the canal to the field will be improved by converting from dirt ditch to buried pipe. This will reduce seepage and salt loading from these delivery ditches by 99 percent. Canal modifications (*i.e.* conversion to pipeline or canal lining) are not included in this SCPP.

Currently, approximately 70,790 acre-foot of water are used for irrigation in the project area. This includes water directly diverted from streams and water stored in reservoirs. The irrigation system improvements outlined in this plan will provide more efficient use of this water. Deep percolation from the 14,800 acres is expected to be treated though the project action, reducing it by approximately 58 percent. The Colorado River salt loading attributed to this project area will be reduced by the reduction of excess deep percolation passing below the plant root zone. Deep percolation of irrigation water results in concentrating and transporting salt in groundwater to the surface and eventually depositing in the Colorado River.

This proposal is not intended to bring new land under irrigation or to provide water to fields that have been infrequently or marginally irrigated. Any project measure proposed on lands without an adequate irrigation history will not be considered for funding without prior approval by the appropriate state water authority.

Alternatives: The other alternative presently considered is the ''No-Action'' Alternative. Under this alternative accelerated improvements to the on-farm irrigation systems will not be implemented. Environmental conditions, including salt loading into associated tributaries will continue unhindered.

Scoping: The lead and cooperating agencies will conduct an open scoping and public involvement process during the development of the EIS. The scoping process is the key to preparing a concise EIS to receive public input on the alternatives to the proposed action and the range of issues to be addressed in the EIS. The purpose of the scoping meetings is to assist the lead and cooperating agencies in defining the issues that will be evaluated in the EIS. A public meeting was held in McKinnon on December 9, 2009 where input on the project was obtained. A second public and agency scoping meeting will be held as indicated above (see **DATES** and **ADDRESSES** sections above). Further information will be published in local newspapers in advance of the meeting. Any necessary changes will be announced in the local media. Written scoping comments will be considered in the preparation of the draft EIS (see **DATES** and **ADDRESSES** sections above). Comments postmarked or received by e-mail after specified date will be considered to the extent practicable. Questions about the EIS/SCPP, requests for inclusion on the EIS/SCPP mailing list, and requests for copies of any documents associated with the draft EIS/SCPP should be directed to Rachel Bundschuh, Natural Resources Conservation Service, 508 North Broadway Avenue, Riverton, Wyoming 82501–3458; E-mail: *rachel.bundschuh@wy.usda.gov;* Phone: (307) 856–7524, ext. 121.

Dated: August 9, 2011.

J. Xavier Montoya,

State Conservationist.

[FR Doc. 2011–20589 Filed 8–11–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in the following practice standards: #328, Conservation Crop Rotation, #329, Residue and Tillage Management No Till/Strip Till/Direct Seed, #344, Residue Management, Seasonal, #345, Residue and Tillage Management Mulch Till, #346, Residue Management, Ridge Till, #391, Riparian Forest Buffer, #422, Hedgerow Planting, #472, Access Control, #595, Integrated Pest Management, #612, Tree/Shrub Establishment, and #666, Forest Stand Improvement. These practices will be used to plan and install conservation practices.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: July 21, 2011.

W. Ray Dorsett,

Acting State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 2011–20586 Filed 8–11–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1778]

Designation of New Grantee, Foreign-Trade Zone 41, Milwaukee, WI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 6/9/2011) submitted by the Foreign Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, Milwaukee, Wisconsin, requesting reissuance of the grant of authority for said zone to the Port of Milwaukee, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the Port of Milwaukee as the new grantee of Foreign Trade Zone 41, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 3rd day of August 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2011–20566 Filed 8–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1777]

Reorganization of Foreign-Trade Zone 216 Under Alternative Site Framework, Olympia, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Port of Olympia, grantee of Foreign-Trade Zone 216, submitted an application to the Board (FTZ Docket 31–2011, filed 05/09/2011) for authority to reorganize under the ASF with a service area of Thurston County and portions of Kitsap, Lewis and Mason Counties, Washington, within and adjacent to the Olympia U.S. Customs and Border Protection port of entry, and FTZ 216's existing Sites 1–7 and 9–13 would be categorized as magnet sites, existing Site 8 would be deleted and acreage reduced at existing Sites 1, 3, 4 and 13;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 27987, 05/13/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 216 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to five-year ASF sunset provisions for magnet sites that would terminate authority for Sites 1–7 and 9–13 if not activated by August 31, 2016.

Signed at Washington, DC this 3rd day of August 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2011–20567 Filed 8–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–2–2011]

Foreign-Trade Zone 26, Temporary/Interim Manufacturing Authority, Makita Corporation of America, Hand-Held Power Tool and Gasoline/Electric-Powered Garden Product Manufacturing; Notice of Approval

On June 22, 2011, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting temporary/interim manufacturing (T/IM) authority, on behalf of Makita Corporation of America, to manufacture

hand-held power tools and garden products under FTZ procedures within FTZ 26–Site 20, in Buford, Georgia.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/2004) and 1480 (71 FR 55422, 9/22/2006), including notice in the **Federal Register** inviting public comment (76 FR 37781, 06/28/2011). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures except for finished products under HTSUS 8465.91 (table, slide and compound miter saws). Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application is approved, with the exception of products under HTSUS 8465.91, effective this date, until August 5, 2013, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: August 5, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–20569 Filed 8–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–965 and C–570–966]

Drill Pipe From the People's Republic of China: Initiation of Anti-circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from VAM Drilling U.S.A., Texas Steel Conversion Inc. and Rotary Drilling Tools (collectively the ''Petitioners''), the Department of Commerce (the ''Department'') is initiating an anti-circumvention inquiry to determine whether certain imports of drill pipe from the People's Republic of China (''PRC'') are circumventing the *Drill Pipe Orders.*[1]

DATES: *Effective Date:* August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2011, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.225(h) of the Department's regulations, the Petitioners submitted a request for the Department to initiate an anti-circumvention inquiry of the Hilong Group of Companies Co., Ltd. (''Hilong'')[2] to determine whether pipe[3] and tool joints produced in the PRC, and friction welded together in the United Arab Emirates (''UAE''), which are allegedly products of the PRC exported from the UAE, are circumventing the *Drill Pipe Orders.*[4] In their request, the Petitioners contend that Hilong's PRC drill pipe facility exports PRC-produced pipe and tool joints to AlMansoori/Hilong in the UAE, which friction welds the pipe to the tools joints, and then exports them to Hilong USA, which enters and sells the drill pipe as UAE origin merchandise. The Petitioners argue that because Hilong's PRC-produced pipe and tool joint are assembled in the UAE, and enter the United States as UAE-origin merchandise which is of the same class or kind as the merchandise covered by the *Drill Pipe Orders,* this constitutes circumvention.

On June 16, 2011, the Petitioners certified that all parties on the scope service list were served with their request. On July 6, 2010, the Department issued a supplemental questionnaire to the Petitioners regarding the request to initiate the anti-circumvention inquiry. On July 13, 2011, the Petitioners provided a response to the Department's supplemental questionnaire.[5] Hilong did not submit comments regarding the Petitioners' circumvention allegations.

On July 27, 2011, the Department extended the deadline to initiate an anti-circumvention inquiry by 8 days, pursuant to section 351.302(b) of the Department's regulations.[6] On August 3, 2011, the Department extended the deadline to initiate an anti-circumvention inquiry by 14 days, pursuant to section 351.302(b) of the Department's regulations.[7]

Scope of the Orders

The products covered by the orders are steel drill pipe, and steel drill collars, whether or not conforming to American Petroleum Institute (''API'') or non-API specifications. Included are finished drill pipe and drill collars without regard to the specific chemistry of the steel (*i.e.,* carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. Also included are unfinished drill collars (including all drill collar green tubes) and unfinished drill pipe (including drill pipe green tubes, which are tubes meeting the following description: seamless tubes with an outer diameter of less than or equal to 6 5/8 inches (168.28 millimeters), containing between 0.16 and 0.75 percent molybdenum, and containing between 0.75 and 1.45 percent chromium). The scope does not include tool joints not attached to the drill pipe, nor does it include unfinished tubes for casing or tubing covered by any other antidumping or countervailing duty order.

The subject products are currently classified in the following Harmonized Tariff Schedule of the United States (''HTSUS'') categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050 and 7304.59.8055.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Initiation of Anti-Circumvention Proceeding

Section 781(b)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries, under section 781(b)(1) of the Act, the Department will also evaluate whether: (1) The process

[1] *See Drill Pipe from the People's Republic of China: Antidumping Duty Order,* 76 FR 11757 (March 3, 2011); *Drill Pipe from the People's Republic of China: Countervailing Duty Order,* 76 FR 11758 (March 3, 2011) collectively the ''*Drill Pipe Orders.*''

[2] This includes Hilong's U.S. affiliate, Hilong USA LLC. (''Hilong USA'') and its joint venture affiliate Almansoori/Hilong Petroleum Pipe Company (''Almansoori/Hilong'') located in the United Arab Emirates (the ''UAE'').

[3] ''Pipe'' is heat treated and upset green tube, minus the tool joint. *See* Circumvention Request at 3.

[4] *See* the Petitioners' June 14, 2011 submission (''Circumvention Request'') at 1.

[5] *See* the Petitioners' July 13, 2011 submission (''Circumvention Request Supplement'').

[6] *See* Letter to Petitioner, dated July 27, 2011.

[7] *See* Letter to Petitioner, dated August 3, 2011.

of assembly or completion in the other foreign country is minor or insignificant; (2) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (3) action is appropriate to prevent evasion of such an order or finding. As discussed below, the Petitioners have provided evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The Petitioners state that the *Drill Pipe Orders* cover the drill pipe assembled in the UAE because it is the same class or kind as the drill pipe produced in the PRC. The Petitioners assert that the drill pipe assembled in the UAE contains the same components as the drill pipe produced in the PRC, *i.e.,* green tube which is subsequently heat treated and upset, and tool joints. According to the Petitioners, the only distinction is that the friction welding of the pipe to the tool joint occurs in the UAE instead of the PRC. The Petitioners provided affidavits, as well as an e-mail from one of the Petitioner's customers, which indicate that Hilong USA has imported merchandise identical to that which is subject to the *Drill Pipe Orders.*[8] Since the merchandise being imported into the United States from the UAE is physically identical to the subject merchandise from the PRC, pursuant to section 781(b)(1)(A)(i) of the Act, this drill pipe is of the same class or kind as the drill pipe subject to the *Drill Pipe Orders.*

B. Completion of Merchandise in a Foreign Country

The Petitioners state that the drill pipe subject to its anti-circumvention inquiry request is made from pipe and tool joints produced in the PRC, then exported to and assembled in the UAE for re-export to the United States. The Petitioners maintain that the pipe is subject merchandise before the assembly performed by Almansoori/Hilong in the UAE, which consists of friction welding the PRC-produced pipe to the PRC-produced tool joints. The Petitioners posit that the completed merchandise is then exported to the United States as UAE-origin. Therefore, the Petitioners conclude that, pursuant to section 781(b)(1)(B)(ii) of the Act, Hilong's drill pipe is merchandise assembled in another foreign country (the UAE) from merchandise that is produced in a country (the PRC) already subject to the *Drill Pipe Orders.*[9]

C. Minor or Insignificant Process

The Petitioners argue that for the purposes of section 781(b)(1)(C) of the Act, the process of friction welding the pipe to the tool joint in the UAE is ''minor or insignificant'' as defined by the Act. According to the Petitioners, the most fundamental aspect of the production process—the forming of seamless green tube by rotary piercing billet in an integrated or electric furnace, and the forming of tool joints from alloy steel bars that undergo a number of processes that require various specialized and expensive equipment—occurs in the PRC.[10] Citing to a normal value build up consisting of factors of production consumption ratios reported by VAM Drilling, and surrogate values used in the antidumping investigation, the Petitioners contend that pipe and tool joint production account for about 75 percent of the cost of manufacture of the subject merchandise.[11]

The Petitioners maintain that only a small percentage of the cost of manufacture consists of friction welding the pipe to the tool joint. The Petitioners provided evidence of the costs VAM Drilling incurs to subcontractors for friction welding pipe to tool joints.[12]

The Petitioners reason that an analysis of the relevant statutory factors of section 781(b)(2) of the Act further supports its conclusion that the UAE processing is ''minor or insignificant.'' These factors include (1) the level of investment in the foreign country, (2) the level of research and development in the foreign country, (3) the nature of the production process in the foreign country, (4) the extent of production facilities in the foreign country and (5) whether the value of the processing in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

(1) Level of Investment

The Petitioners provided an affidavit from VAM Drilling asserting that the cost of a friction welding line is approximately $20 million U.S. dollars (''USD'').[13] The Petitioners provided an additional affidavit that asserts that one of VAM Drilling's affiliates has invested $650 million in a rotary piercing mill to produce pipe, although this company already has its own steel mill for producing billet.[14] Further, the Petitioners provided publically available information that Tianjin Pipe Company indicates that the costs for a pipe production facility with a mill to produce billet is $1 billion USD.[15] Thus, the Petitioners conclude that the cost of investing in a friction welding line is approximately two percent of the cost of investing in a pipe production line.

The Petitioners argue that, based on their own experience in the UAE market, with regard to drill pipe, Almansoori/Hilong is engaged in assembly operations, and is essentially an export platform for PRC-origin drill pipe and is not an integrated production facility. Consequently, the Petitioners assert that little investment has been made in the UAE by Hilong in the assembly of drill pipe.

(2) Level of Research and Development

The Petitioners state that, similar to the level of investment, because Almansoori/Hilong's drill pipe operations only involve the friction welding of pipe to tool joints, little or no research and development are required to set up and operate the UAE company to assemble Chinese components.[16]

(3) Nature of the Production Process

According to the Petitioners, the nature of the production process for friction welding pipe to tool joints requires little machinery or equipment. The Petitioners contend that once a tool joint is attached, the drill pipe is exported to the United States.[17] The Petitioners argue that the drill pipe assembled in the UAE contains the same components as the drill pipe produced in the PRC, *i.e.,* pipe friction welded to tool joints, and the only distinction is that the friction welding of the tool joint to the pipe occurs in the UAE instead of the PRC. As a consequence, the Petitioners maintain that before the pipe is friction welded to the tool joints, the pipe is of the same class or kind as the drill pipe produced in the PRC that is subject to the *Drill Pipe Orders.*

[8] *See* Circumvention Request at Attachment 3; *see also* Circumvention Request Supplement at Exhibit 5.

[9] *See* Circumvention Request at 4.

[10] *See* Circumvention Request at 5; *see also* Circumvention Request Supplement at 1–2.

[11] Because this information is business proprietary, its specific content cannot be discussed here. *See* Circumvention Request at 5 and Attachment 4a; *see also* Circumvention Request Supplement at 2 and Exhibit 1.

[12] Because this information is business proprietary, its specific content cannot be discussed here. *See* Circumvention Request Supplement at 2 and Exhibit 1.

[13] *See* Circumvention Request Supplement at 1–2 and Exhibit 1.

[14] *See* Circumvention Request Supplement at 1 and Exhibit 2.

[15] *See* Circumvention Request Supplement at 1–2 and Exhibit 3.

[16] *See* Circumvention Request at 6.

[17] *See* Circumvention Request at 3.

(4) Extent of Production in the UAE

As stated above, the Petitioners contend that the extent of production in the UAE is simply friction welding PRC-produced pipe to PRC-produced tool joints. As noted above, the Petitioners state that this process is completed by the single friction welding line by Almansoori/Hilong in the UAE.

(5) Value of Processing in the UAE as Compared to Drill Pipe Imported Into the United States

The Petitioners assert that assembly in the UAE of pipe and tool joints adds little value to the final product exported to the United States. The Petitioners posit that the value of the final product is, most significantly, the pipe and tool joints, which, as noted above, comprise approximately 75% of the cost of manufacture. Also as noted above, the Petitioners maintain that only a small percentage of the cost of manufacture consists of friction welding the pipe to the tool joint.[18] Thus, the Petitioners maintain that the completion activities in the UAE add very little to the drill pipe that is exported to the United States because pipe and tool joints supplied by Hilong are sourced from the PRC.

D. Value of Merchandise Produced in PRC

The Petitioners argue that the evidence, as noted above, in its anti-circumvention request clearly supports their position that the value of the pipe and tool joints produced in the PRC, and assembled by Almansoori/Hilong, represents a significant portion of the total value of the merchandise exported to the United States, as measured by a percentage of the cost of manufacture.

E. Additional Factors To Consider in Determining Whether Action Is Necessary

The Petitioners argue that the additional factors contained in section 781(b)(3) of the Act must also be considered in the Department's decision whether to issue a finding of circumvention regarding the importation of drill pipe from the UAE.

(1) Pattern of Trade

The Petitioners state that section 781(b)(3) of the Act directs the Department to take into account patterns of trade when making a decision whether to include merchandise assembled or completed in the UAE within the scope of the *Drill Pipe Orders.* Based on an analysis of publically available information from the ITC's Dataweb of U.S. import data, the Petitioners assert that after the initiation of the investigations in January 2010, imports of drill pipe from the PRC fell significantly.[19] The Petitioners note that Almansoori/Hilong was founded in 2006, but did not begin production until 2009.[20] The Petitioners state that they are unaware of when Almansoori/Hilong began affixing pipe to tool joints, and only recently became aware of Almansoori/Hilong's commercial operations involving drill pipe in recent months, in conjunction with information concerning drill pipe exports to the United States from the UAE.[21] The Petitioners provided data which shows that in 2011 imports of drill pipe from the UAE increased.[22] Specifically, the Petitioners provided DataWeb data which shows that in the first five months of 2011 the imports of drill pipe nearly doubled compared to the first five months of 2010.[23] Moreover, the Petitioners provided evidence that a very large shipment of drill pipe entered the United States in June 2011.[24] One of the Petitioners, Rotary Drilling Tools, provided an affidavit which states that a U.S. distributor of drill pipe is marketing Almansoori/Hilong-produced drill pipe as having avoided dumping duties by assembling the pipe and tool joints in the UAE. The Petitioners contend that these patterns of trade are consistent with an assembly operation in the UAE established by a PRC producer who is no longer able to supply drill pipe directly to the United States due to the antidumping duty order in place.

(2) Affiliation

The Petitioners state that section 781(b)(3) of the Act directs the Department to take into account whether the manufacturer or exporter of the merchandise is affiliated with the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States when making decisions on anti-circumvention rulings. The Petitioners have provided an affidavit, as well as website pages, indicating that Hilong operates a joint venture in the UAE, Almansoori/Hilong.[25] Furthermore, the Petitioners have provided an affidavit which indicates that Almansoori/Hilong operates a friction welding line in the UAE.[26] The Petitioners contend that, based on proprietary information, Hilong USA imports drill pipe as having been finished in the UAE and is, thus, able to avoid dumping duties.[27] The Petitioners maintain that through minor assembly operations in the UAE, Hilong is actively circumventing the *Drill Pipe Orders.* According to the Petitioners, the acknowledgement of affiliation and the timing of the exports from the UAE to the United States support a conclusion that Hilong's assembly of PRC-produced drill pipe components in the UAE is circumventing the *Drill Pipe Orders.*

(3) Subsequent Import Volume

The Petitioners state that section 781(b)(3) of the Act directs the Department to take into account whether imports into the foreign country of the merchandise have increased after the initiation of the investigation which resulted in the issuance of an order or finding when making a decision on anti-circumvention rulings. While the Petitioners were unable to provide evidence of trade flows of pipe and tool joints between the PRC and the UAE, the Petitioners note that they are unaware of any imports of pipe or tool joints into the United States by Almansoori/Hilong prior to the initiation of the investigations in January 2010.[28] The Petitioners note that U.S. import data shows that, after the initiation of the investigations, the UAE became a source of drill pipe to the United States when Almansoori/Hilong began operations.[29] The Petitioners argue that Almansoori/Hilong's initial shipments, starting in February 2011, support the conclusion that the UAE had not, until recently, been a source of drill pipe shipments to the United States.[30]

Analysis of the Request

Based on our analysis of the Petitioners' anti-circumvention inquiry request, the Department determines that the Petitioners have satisfied the criteria under section 781(b) of the Act to

[18] *See* Circumvention Request Supplement at 2 and Exhibit 1.

[19] *See* Circumvention Request at Attachment 6; *see also* Circumvention Request Supplement at Exhibit 4c.

[20] *See* Circumvention Request Supplement at 4.

[21] *Id.*

[22] *See* Circumvention Request at Attachment 6.

[23] *Id.*

[24] *See* Circumvention Request Supplement at Exhibit 5.

[25] *See* Circumvention request at Attachment 3; *see also* Circumvention Request Supplement at Exhibits 6 & 7.

[26] *See* Circumvention Request at Attachment 3.

[27] *See* Circumvention Request Supplement at Exhibit 4.

[28] *See* Circumvention Request at 9.

[29] *See* Circumvention Request at Attachments 5 & 6; *see also* Circumvention Request Supplement at Exhibits 4 & 5.

[30] *Id.*

warrant an initiation of a formal anti-circumvention inquiry. In accordance with section 351.225(e) of the Department's regulations, if the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise, the Department will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry, including an anti-circumvention inquiry. In addition, in accordance with section 351.225(f)(1)(ii) of the Department's regulations, a notice of the initiation of an anti-circumvention inquiry issued under paragraph (e) of this section includes a description of the product that is the subject of the anti-circumvention inquiry—drill pipe that contain the characteristics as provided in the scope of the *Drill Pipe Orders,* and an explanation of the reasons for the Department's decision to initiate an anti-circumvention inquiry, as provided below.

With regard to whether the merchandise from the UAE is of the same class or kind as the merchandise produced in the PRC, the Petitioners have presented information to the Department indicating that, pursuant to section 781(b)(1)(A) of the Act, the merchandise being exported from the UAE by Almansoori/Hilong may be of the same class or kind as drill pipe produced in the PRC, which is subject to the *Drill Pipe Orders.* Consequently, the Department finds that the Petitioners have provided sufficient information in their request regarding the class of kind of merchandise to support the initiation of an anti-circumvention inquiry.

With regard to completion or assembly of merchandise in a foreign country, pursuant to section 781(b)(1)(B) of the Act, the Petitioners have also presented information to the Department indicating that the drill pipe exported from the UAE to the United States is assembled by Almansoori/Hilong in the UAE from pipe and tool joints produced in the PRC. We find that the information presented by the Petitioners regarding this criterion supports their request to initiate an anti-circumvention inquiry.

The Department believes that the Petitioners sufficiently addressed the factors described in section 781(b)(2) of the Act regarding whether the friction welding of pipe to tool joints in the UAE is minor or insignificant. Specifically, in support of their argument, the Petitioners relied on their own experience and surrogate values from the less-than-fair-value investigation. Thus, we find that the information presented by the Petitioners supports their request to initiate an anti-circumvention inquiry. In particular, we find that the Petitioners' submissions suggest that (1) little investment has been made by Hilong in its drill pipe welding operations in the UAE, (2) Hilong has fully integrated production facilities in the PRC, and therefore, research and development presumably takes place in the PRC rather than the UAE, (3) the friction welding of pipe to tool joints in the UAE does not alter the fundamental characteristics of the drill pipe, nor does it remove it from the scope of the *Drill Pipe Orders,* (4) Almansoori/Hilong has a lower investment level than companies that manufacture pipe and tool joints and (5) friction welding pipe to tool joints adds little value to the merchandise imported to the United States. Our analysis will focus on Almansoori/Hilong's assembly operations in the UAE and, in the context of this proceeding, we will closely examine the manner in which this company's processing materials are obtained, whether those materials are considered subject to the scope of the *Drill Pipe Orders,* and the extent of processing in the UAE, as well as the manner in which production and sales relationships are conducted with the alleged PRC and U.S. affiliates.

With respect to the value of the merchandise produced in the PRC, pursuant to section 781(b)(1)(D) of the Act, the Petitioners relied on one of its member's information and arguments in the ''minor or insignificant process'' portion of its anti-circumvention request to indicate that the value of the pipe and tool joint may be significant relative to the total value of finished drill pipe exported to the United States. We find that the information adequately meets the requirements of this factor, as discussed above, for the purposes of initiating an anti-circumvention inquiry.

Finally, the Petitioners argue that pursuant to section 781(b)(3) of the Act the Department considers the pattern of trade, affiliation, and subsequent import volumes as factors in determining whether to initiate the anti-circumvention inquiry. Here, we find that imports of drill pipe from the PRC decreased after the initiation of the investigations, that the Almansoori/Hilong joint venture in the UAE is affiliated to Hilong, and that the U.S. import data submitted by the Petitioners suggests that imports of drill pipe have risen since the investigations.

Accordingly, based on the Petitioners' submissions, we have determined that we have a sufficient basis to initiate a formal anti-circumvention inquiry concerning the *Drill Pipe Orders,* pursuant to section 781(b) of the Act. In accordance with section 351.225(l)(2) of the Department's regulations, if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

This anti-circumvention inquiry covers Hilong and its affiliated companies in the UAE and United States. If, within sufficient time, the Department receives a formal request from an interested party regarding potential circumvention of the *Drill Pipe Orders* by other UAE companies, we will consider conducting additional inquiries concurrently.

The Department will establish a schedule for questionnaires and comments on the issues. In accordance with section 351.225(f)(5), the Department intends to issue its final determination within 300 days of the date of publication of this initiation. This notice is published in accordance with section 777(i)(1) of the Act.

Dated: August 5, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–20570 Filed 8–11–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 12, 2011.

SUMMARY: On April 7, 2011, the Department of Commerce (the Department) published its preliminary results of the administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil. This review covers four producers/exporters of the subject merchandise to the United States. The period of review (POR) is March 1, 2009, through February 28, 2010.

After analyzing the comments received, we have made certain changes in the margin calculations. Therefore,

these final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

Further, we have determined not to revoke the antidumping duty order with respect to OJ from Brazil produced and exported by Sucocitrico Cutrale, S.A. (Cutrale).

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez or Blaine Wiltse, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0629 or (202) 482–6345, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2011, the Department published in the **Federal Register** the preliminary results of the 2009–2010 administrative review of antidumping duty order on certain OJ from Brazil. *See Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part,* 76 FR 19315 (Apr. 7, 2011) (*Preliminary Results*). Also in April, after the issuance of the preliminary results, the Department issued, and Cutrale submitted responses to, two additional supplemental questionnaires.

We invited parties to comment on our preliminary results of review. In May 2011, we received case briefs from the petitioners (*i.e.,* Florida Citrus Mutual and Citrus World Inc.), Cutrale, and Fischer S.A. Comercio, Industria, and Agricultura (Fischer). We received rebuttal briefs from the petitioners and Cutrale.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil,* 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra-Frutesp (SA), Cutrale, Fischer, and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Period of Review

The POR is March 1, 2009, through February 28, 2010.

Determination Not To Revoke Order, In Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider whether: (1) The company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

As we noted in the *Preliminary Results,* on March 31, 2010, Cutrale requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b). This request was accompanied by certification that: (1) Cutrale sold the subject merchandise at not less than NV during the current POR and will not sell the merchandise at less than NV in the future; and (2) it sold subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Cutrale also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, it sold the subject merchandise at less than NV. *See Preliminary Results,* 76 FR at 19315.

After analyzing Cutrale's request for revocation (as more fully explained in the Issues and Decision Memorandum accompanying this notice (the Decision Memo)), we find that it does not meet all of the criteria under 19 CFR 351.222(b). In the second and third administrative reviews, we found that Cutrale sold subject merchandise at less than NV. *See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review,* 74 FR 40167 (Aug. 11, 2009); and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in* Part, 75 FR 50999 (Aug. 18, 2010). Accordingly, Cutrale did not demonstrate that it did not sell the subject merchandise at less than NV for a period of at least three consecutive years.

Therefore, we determine that Cutrale does not qualify for revocation of the order on certain orange juice pursuant to 19 CFR 351.222(b)(2), and as a result

we have not revoked the order with respect to merchandise produced and exported by Cutrale. For further discussion of this issue, see the Decision Memo at Comment 3.

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from two companies named in the notice of initiation of this review, Coinbra-Frutesp (SA) (Coinbra-Frutesp) and Montecitrus Trading S.A. (Montecitrus), and we confirmed their claims with U.S. Customs and Border Protection (CBP). Because we find that the record indicates that Coinbra-Frutesp and Montecitrus did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR.

As we stated in the *Preliminary Results,* our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP. *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27393 (May 19, 1997); *see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review,* 75 FR 76700, 76701 (Dec. 9, 2010). As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the ''automatic assessment'' regulation, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

As noted in the *Preliminary Results,* because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Coinbra-Futesp or Montecitrus and exported by other parties at the all-others rate. In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to these two companies and issue appropriate instructions to CBP based on the final results of this administrative review. *See* the ''Assessment Rates'' section of this notice below.

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Cutrale and Fischer made home market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. *See Preliminary Results.* For these final results, we performed the cost test following the same methodology as in the *Preliminary Results,* except as discussed in the Decision Memo.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(1) and (2) of the Act.

For purposes of these final results, we continue to find that Cutrale and Fischer made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales (if any) as the basis for determining NV, pursuant to section 773(b)(1) of the Act. Where there were no home market sales made in the ordinary course of trade, we based NV on constructed value.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 7046, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period March 1, 2009, through February 28, 2010:

Manufacturer/exporter	Percent margin
Coinbra-Frutesp (SA)	*
Fischer S.A. Comercio, Industria, and Agricultura	3.97
Montecitrus Trading S.A.	*
Sucocitrico Cutrale, S.A.	0.42 (*de minimis*)

* No shipments or sales subject to this review.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

We have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate is above *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice,* 68 FR 23954. This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final

results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of OJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.51 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Order: Certain Orange Juice from Brazil,* 72 FR 12183 (Mar. 9, 2006). These deposit requirements shall remain in effect until further notice.

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 serves as the only 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.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 5, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Offsetting of Negative Margins.
2. Capping Interest Revenue by Credit Expenses.
3. Request for Revocation by Cutrale.
4. U.S. Brix Level.
5. Inventory Carrying Costs for Cutrale's U.S. Sales.
6. Calculation of Cutrale's U.S. Indirect Selling Expense Rate.
7. Calculation of Cutrale's General and Administrative Expense Rate.
8. Calculation of Fischer's International Freight Expenses.
9. Use of Fischer's Home Market Sample Sales in Calculating Normal Value and Constructed Value Profit.

[FR Doc. 2011–20563 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the U.S. Travel and Tourism Advisory Board.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the U.S. Travel and Tourism Advisory Board (Board). The purpose of the Board is to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

DATES: All applications must be received by the Office of Advisory Committees by 5 p.m. Eastern Daylight Time (EDT) on September 16, 2011.

ADDRESSES: Please submit application information by mail to Jennifer Pilat, Office of Advisory Committees, U.S. Travel and Tourism Advisory Board Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230 or via e-mail to *oacie@trade.gov*.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, U.S. Travel and Tourism Advisory Board Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–5896, *e-mail: jennifer.pilat@trade.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Travel and Tourism Advisory Board (Board) is established under the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (FACA), and advises the Secretary of Commerce (Secretary) on matters relating to the U.S. travel and tourism industry pursuant to 15 U.S.C. 1512. The Board provides a means of ensuring regular contact between the U.S. Government and the travel and tourism industry. The Board advises the Secretary on government policies and programs that affect United States travel and tourism, and the Board serves as a forum for discussing and proposing solutions to industry-related problems. The Board acts as a liaison among the stakeholders represented by the membership and provides a forum for those stakeholders on current and emerging issues in the travel and tourism sector. The Board recommends ways to ensure that the United States remains the preeminent destination for international visitation and tourism throughout the world.

The Office of Advisory Committees is accepting applications for Board members. Members shall represent companies and organizations in the travel and tourism sector from a broad range of products and services, company sizes, and geographic locations and shall be drawn from large, medium, and small travel and tourism companies, private-sector organizations involved in the export of travel and tourism-related products and services, and other tourism-related entities.

Each Board member shall serve as the representative of a U.S. company in the travel and tourism industry, a U.S. organization involved in the export of travel and tourism-related products and services, or a tourism-related U.S. entity. For eligibility purposes, a ''U.S. company'' is a for-profit firm that is incorporated in the United States (or an unincorporated U.S. firm with its principal place of business in the United States) that is controlled by U.S. citizens or by other U.S. companies. A company is not a U.S. company if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is known to be controlled, directly or

indirectly, by non-U.S. citizens or non-U.S. companies. For eligibility purposes, a ''U.S. organization'' is an organization, including trade associations and nongovernmental organizations (NGOs), established under the laws of the United States, that is controlled by U.S. citizens, by another U.S. organization (or organizations), or by a U.S. company (or companies), as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable. For eligibility purposes, a U.S. entity includes state and local tourism marketing entities, state government tourism offices, state and/or local government-supported tourism marketing entities, multi-state tourism marketing entities, and other tourism-related entities that can demonstrate U.S. ownership or control.

Members of the Board will be selected, in accordance with applicable Department of Commerce guidelines, based on their ability to carry out the objectives of the Board as set forth above. Members of the Board shall be selected in a manner that ensures that the Board is balanced in terms of points of view, industry subsector, range of products and services, demographics, geography, and company size.

Additional factors which will be considered in the selection of Board members include candidates' proven experience in the strategic development and management of travel and tourism-related or other service-related organizations; or the candidate's proven experience in promoting, developing, and implementing advertising and marketing programs for travel-related or tourism-related industries.

Priority may be given to a Chief Executive Officer, Executive Director, or President (or comparable level of responsibility) of a U.S. company, U.S. organization, or U.S. entity in the travel and tourism sector.

Members shall serve a term of two years from the date of appointment, at the pleasure of the Secretary of Commerce. All appointments will automatically terminate no later than November 15, 2013. Members will serve at the discretion of the Secretary of Commerce. Although the Board's current charter terminates in September 2011, it is anticipated that it will be rechartered.

Members shall serve in a representative capacity, representing the views and interests of their particular industry subsector. Board members are not special government employees, and will receive no compensation for their participation in Board activities. Members participating in Board meetings and events will be responsible for their travel, living and other personal expenses. Meetings will be held regularly and, to the extent practical, not less than twice annually, usually in Washington, DC.

To be considered for membership, please provide the following information by the 9/16/2011, 5 p.m. EDT deadline, via e-mail, to *OACIE@trade.gov* or, via mail, to Jennifer Pilat, Office of Advisory Committees, U.S. Travel and Tourism Advisory Board Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

1. Name and title of the individual requesting consideration.

2. A sponsor letter from the applicant on his or her company/organization/entity letterhead or, if the applicant is to represent a company/organization/entity other than his or her employer, a letter from the company/organization/entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Board. This sponsor letter should also address the applicant's travel and tourism-related experience.

3. The applicant's personal resume.

4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

5. An affirmative statement by the applicant that he or she is not a Federally registered lobbyist, and that the applicant understands that he or she, if appointed, will not be allowed to continue to serve as a Board member if the applicant becomes a Federally registered lobbyist.

6. If the applicant represents a tourism-related U.S. entity, the functions and responsibilities of the entity, and information regarding the entity's U.S. ownership or control.

7. If the applicant represents an organization, information regarding the control of the organization, including the governing structure, members, and revenue sources as appropriate signifying compliance with the criteria set forth above.

8. If the applicant represents a company, information regarding the control of the company, including the governing structure and stock holdings as appropriate signifying compliance with the criteria set forth above.

9. The company's, organization's, or entity's size and ownership, product or service line and major markets in which the company, organization, or operates.

10. Brief statement describing how the applicant will contribute to the work of the Board based on his or her unique experience and perspective (not to exceed 100 words).

Dated: August 2, 2011.

Jennifer Pilat,

Executive Secretary, U.S. Travel & Tourism Advisory Board.

[FR Doc. 2011–20514 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northwest Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 11, 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 Becky Renko, (206) 526–6110 or *becky.renko @noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. The requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner or operator is crucial to the enforcement of regulations issued under the authority of the Magnuson Stevens Fishery Conservation and Management Act (MSA). The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings. The regulations specify fishing gear must be marked with the vessel's official number,

Federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked (*e.g.*, location and color). Law enforcement personnel rely on this information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. The identifying number on fishing gear is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing violations, prosecutions, and other enforcement actions. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear and that traps/pots/other gear are not illegally placed. Gear violations are more readily prosecuted when the gear is marked, allowing for more cost effective enforcement. Cooperating fishermen also use the number to report placement or occurrence of gear in unauthorized areas. Regulation-compliant fishermen ultimately benefit from this requirement, because unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

II. Method of Collection

The physical marking of fishing buoys is done by the affected public (fishermen in the Pacific Coast Groundfish Fishery) according to regulation. No information is collected.

III. Data

OMB Number: 0648–0352.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 946.

Estimated Time per Response: 15 minutes per marking.

Estimated Total Annual Burden Hours: 3,798.

Estimated Total Annual Cost to Public: $3,798.

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.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–20491 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA505

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the Louisiana Department of Wildlife and Fisheries (LDWF). If granted, the EFP would authorize the applicant to collect and retain limited numbers of specimens that would otherwise be prohibited from possession and retention. This study, to be conducted in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Louisiana, is intended to more closely monitor populations of red snapper and other reef fish to ensure public health and seafood quality are maintained.

DATES: Comments must be received no later than 5 p.m., eastern time, on September 12, 2011.

ADDRESSES: You may submit comments on the application by any of the following methods:

- *E-mail: Steve.Branstetter@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: ''LDWF_EFP''.
- *Mail:* Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–824–5305; e-mail: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The described research is part of a new monitoring program by LDWF. The research is intended to involve recreational fishermen in the collection of fundamental biological information of Gulf reef fish. The proposed collection for scientific research involves activities that could otherwise be prohibited by regulations at 50 CFR part 622, as they pertain to reef fish managed by the Gulf of Mexico Fishery Management Council (Council). The applicant requires authorization through the EFP to collect these Council-managed species that may be taken as part of the normal fishing activities of the recreational for-hire sector of the Gulf reef fish fishery. LDWF would enlist the Louisiana Charter Boat Association, a for-hire recreational fishing body that is recognized by the department and the state legislature to assist with a focused watch for red snapper and other Gulf reef fish species exhibiting biological abnormalities, such as skin lesions or infections. LDWF Office of Fisheries personnel and university researchers would train participating charter boat operators to recognize abnormalities in reef fish and to use scientifically accepted technical procedures to process affected fish for laboratory analysis. The charter boat captain would attach an identification tag to each specimen, record the fishing location using Global Positioning System coordinates, and then contact the LDWF via an emergency call-in number. LDWF field personnel would assist in transferring these samples to shore facilities for transport to a pathology laboratory at Louisiana State University for analysis.

The goal of the research is to more closely monitor populations of red snapper and other reef fish taken from state and Federal waters off Louisiana to ensure public health and seafood quality are maintained. The EFP, if approved, would authorize the take of as many as 100 Federally-managed red snapper or other Gulf reef fish through August 31, 2012. Such fish, collected as biological samples, would be exempted from the recreational bag limit for the particular species, and not subject to size limits or seasonal closures.

NMFS finds this application warrants further consideration. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, or special management zones, without additional authorization. Additionally, NMFS would prohibit the possession of Nassau or goliath grouper. A report on the research would be due at the end of the collection period, to be submitted to NMFS and reviewed by the Council.

A final decision on issuance of the EFP will depend on NMFS's review of public comments received on the application, consultations with the affected states, the Council, and the U.S. Coast Guard, as well as a determination that it is consistent with all applicable laws.

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

Dated: August 8, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–20611 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA596

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) for a collaborative effort among personnel from Texas Tech University, Texas A&M—Corpus Christi, and a commercial fishing organization, Shareholders Alliance. If granted, the EFP would authorize the applicants to collect and retain limited numbers of specimens that would otherwise be prohibited from possession and retention. This study, to be conducted in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf), is intended to more closely monitor populations of red snapper and other reef fish to compare relative catch rates and discards between vessels that possess varying amounts of red snapper allocation under the current Gulf red snapper individual fishing quota (IFQ) program.

DATES: Comments must be received no later than 5 p.m., eastern time, on September 12, 2011.

ADDRESSES: You may submit comments on the application by any of the following methods:

- *E-mail: Steve.Branstetter@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: ''TTU_EFP''.
- *Mail:* Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–824–5305; e-mail: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The described research is part of an ongoing Cooperative Research Program Cooperative Agreement (No. NA10NMF4540110) funded by NMFS. The research is intended to involve commercial fishermen in the collection of fundamental fisheries information. Resource collection efforts support the development and evaluation of fisheries management and regulatory options.

The proposed collection for scientific research involves activities that could otherwise be prohibited by regulations at 50 CFR part 622, as they pertain to reef fish managed by the Gulf of Mexico Fishery Management Council (Council). The applicants require authorization through the EFP to collect these Council-managed species that may be taken as part of the normal fishing activities of the commercial sector of the Gulf reef fish fishery. The applicant would be conducting this research in cooperation with a commercial fishing organization, Shareholders Alliance, and would involve as many as 30 vessel owners associated with that organization. Observers from Texas Tech University and Texas A&M—Corpus Christi, would document the catch and bycatch of red snapper and other reef fish during normal commercial fishing operations in the Gulf.

The objective of the study is to compare the discard rate of red snapper and the bycatch rates of other fish species in the red snapper commercial handline component of the Gulf reef fish fishery between fishermen with high and low amounts of quota allocation in both the eastern and western Gulf. By tagging discarded fish, and examining the return rates for recaptured tagged fish, the intent of the research is to estimate the delayed mortality rate, and long-term survival, of fish discarded in the commercial sector using vertical line gear in the Gulf reef fish fishery based on depth of capture. Information learned from this study is intended to help fishermen reduce discard mortality rates using new methodologies such as descender hooks to return fish to depth during fishing operations. In addition, sampling for age, growth, and size composition of the catch and bycatch would be conducted, providing additional information that can be used to assess the health of stock.

Additionally, the goal of the research is to improve the scientific knowledge of red snapper and other reef fish taken from state and Federal waters of the Gulf and to use that knowledge to support fishery management decisions. The EFP, if approved, would authorize the take of as many as 1,000 Federally-managed red snapper or other reef fish through July 31, 2012. Such fish, collected as biological samples, would be exempt from size limit regulations, and would not count against an individual fishermen's specific red snapper IFQ allocation.

NMFS finds this application warrants further consideration. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, or special management zones, without additional authorization. Additionally, NMFS would prohibit the possession of Nassau or goliath grouper. A report on the research would be due at the end of the collection period, to be submitted to NMFS and reviewed by the Council.

A final decision on issuance of the EFP will depend on NMFS's review of public comments received on the application, consultations with the affected states, the Council, and the U.S. Coast Guard, as well as a determination that the EFP is consistent with all applicable laws.

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

Dated: August 8, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–20596 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA634

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee on August 31, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, August 31, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Best Western Wynwood Hotel, 580 U.S. Highway 1, Interstate Traffic Circle, Portsmouth, NH 03801; *telephone:* (603) 436–7600; *fax:* (603) 436–7600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: At the last meeting, the Committee tasked the Monkfish Advisory Panel (AP) and the Monkfish Plan Development Team (PDT) to elaborate and substantiate the bullet list of problems and issues developed by the AP and Committee after the scoping session on Amendment 6, in which the New England and Mid-Atlantic Councils are considering catch shares management for the monkfish fishery. At this meeting, the Committee will review the AP and PDT reports and develop a recommended set of goals and objectives for Amendment 6 for approval by the Councils.

The Committee will also hold a closed session at the end of the meeting to review applications for recently vacated AP seats. The Committee's recommendations will be transmitted to the Executive Committee for approval.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–20470 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA635

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee in Augsut, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, August 30, 2011 at 9 a.m.

ADDRESSES: This meeting will be held at the Best Western Wynwood Hotel, 580 US Highway 1, Interstate Traffic Circle, Portsmouth, NH 03801; *telephone:* (603) 436–7600; *fax:* (603) 436–7600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will continue development of options to minimize the adverse effects of fishing on essential fish habitat and will also continue development of alternatives to protect deep-sea corals from fishing, these options will be presented to the Council at the September meeting. The Committee will also review remaining essential fish habitat designation issues held over from previous meetings. Other business will be discussed at the discretion of the Chair.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–20472 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA579

Western Pacific Fisheries; Approval of a Marine Conservation Plan for the Northern Mariana Islands

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a marine conservation plan for the Northern Mariana Islands.

DATES: This agency decision is effective from August 4, 2011, through August 3, 2014.

ADDRESSES: Copies of the MCP are available from *http://www.regulations.gov,* or the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–944–2108.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which the PIAFA applies. Before entering into a PIAFA, the appropriate Governor, with the concurrence of the Council, must develop a 3-year marine conservation plan (MCP) providing details on uses for any funds collected by the Secretary under the PIAFA.

The Magnuson-Stevens Act requires payments received under a PIAFA to be deposited into the United States Treasury and then conveyed to the Treasury of the Pacific Insular Area for which funds were collected. In the case of violations by foreign fishing vessels occurring within the EEZ off any Pacific Insular Area, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, including sums collected from the forfeiture and disposition or sale of property seized subject to its authority, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, after direct costs of the enforcement action are subtracted. Any funds deposited into the Treasury of the Pacific Insular Area may be used by the jurisdiction for fisheries enforcement and for implementation of an MCP.

An MCP must be consistent with the Council's fishery ecosystem plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing is being considered at this time, the Council, at its 151st meeting held June 15–18, 2011, reviewed and approved the Northern Mariana Islands MCP and recommended its submission to the Secretary for approval. On June 29, 2011, the Governor of the Commonwealth of the Northern Mariana Islands (CNMI) submitted the MCP to NMFS, the designee of the Secretary, for review and approval.

The CNMI MCP contains 10 conservation and management objectives under which planned projects and activities designed to meet the objective are identified and described, as follows:

Objective 1. Data collection and reporting through a commercial harvest monitoring program.

Objective 2. Resource assessment and monitoring through analysis of data on pelagic fisheries resources.

Objective 3. Habitat assessment and monitoring.

Objective 4. Management procedures through the development of management zones for the U.S. Exclusive Economic Zone (EEZ).

Objective 5. Surveillance and enforcement through an EEZ enforcement program.

Objective 6. Promote responsible domestic fisheries development to provide long term economic growth and stability and local food production. This objective would be supported through the following projects:

(a) Construction of cold storage, fish processing, and fish market facilities.

(b) Longline permit, reporting, and quota utilization program to facilitate responsible fisheries.

(c) Development of a fish marketing plan that includes market identification, transportation, fish products, branding and ecolabeling, and other marketing issues.

(d) Enhance fishing opportunities by deploying community fish aggregation devices.

(e) Fisheries technology and education program.

(f) Recreational and subsistence fishing economic impact and use study.

(g) Charter fishing economic impact study.

(h) CNMI commercial fisheries baseline assessment.

Objective 7. Public participation.

Objective 8. Regional cooperation through participation in regional fisheries meetings and conferences.

Objective 9. Western Pacific demonstration projects, including the following:

(a) Village-based aquaculture project.

(b) Northern Islands remote fishing station project.

Objective 10. Performance evaluation.

This notice announces that NMFS has determined that the CNMI MCP satisfies the requirements of the Magnuson-Stevens Act and approves the MCP for the 3-year period from August 4, 2011, through August 3, 2014. The current MCP supersedes the amended CNMI MCP approved for the period October 6, 2009, through October 6, 2011 (74 FR 25710, May 29, 2009).

Dated: August 8, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–20594 Filed 8–11–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agency.

DATES: *Effective Date: 9/12/2011.*

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/20/2011 (76 FR 29210–29211) and 6/17/2011 (76 FR 35415–35417), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7530–00–NIB–0993—Pocket Folder, Classification, Letter Size, Earth Red
NSN: 7530–00–NIB–0994—Pocket Folder, Classification, Letter Size, Light Green
NSN: 7530–00–NIB–0995—Pocket Folder, Classification, Letter Size, Dark Green
NSN: 7530–00–NIB–0996—Pocket Folder, Classification, Letter Size, Light Blue
NSN: 7530–00–NIB–0997—Pocket Folder, Classification, Letter Size, Dark Blue
NSN: 7530–00–NIB–0998—Pocket Folder, Classification, Letter Size, Dark Red
NSN: 7530–00–NIB–0999—Pocket Folder, Classification, Letter Size, Yellow
NSN: 7530–00–NIB–1000—Pocket Folder, Classification, Legal Size, Earth Red
NSN: 7530–00–NIB–1001—Pocket Folder, Classification, Legal Size, Light Green
NSN: 7530–00–NIB–1002—Retention Envelope/Jacket, Letter and Legal Sizes
NPA: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: General Services Administration, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.
NSN: 7045–00–NIB–0369—Privacy Shield, 16:9 Aspect Ratio Computer Monitor, 14.0 Widescreen
NSN: 7045–00–NIB–0370—Privacy Shield, 16:9 Aspect Ratio Computer Monitor, 15.6 Widescreen
NSN: 7045–00–NIB–0374—Privacy Shield, 16:9 Aspect Ratio Computer Monitor, 17.3 Widescreen
NSN: 7045–00–NIB–0371—Privacy Shield, 16:9 Aspect Ratio Computer Monitor, 18.5 Widescreen
NSN: 7045–00–NIB–0372—Privacy Shield, 16:9 Aspect Ratio Computer Monitor, 20.0 Widescreen
NSN: 7045–00–NIB–0373—Privacy Shield, 16:9 Aspect Ratio Computer Monitor, 21.5 Widescreen
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.
NSN: 7045–00–NIB–0367—Anti-Glare Display Shield, iPad
NSN: 7045–00–NIB–0368—Privacy Shield, iPad
NSN: 7045–00–NIB–0345—Privacy Shield, Netbooks, 10.1 Widescreen
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.
NPA: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, New York, NY
NSN: 5180–00–NIB–0007—Tool Kit, Peel & Stick NonSkid Application, New Installation, Standard Sizes
NSN: 5180–00–NIB–0008—Tool Kit, Peel & Stick NonSkid Kit Application, New Installation, Custom Kits
NSN: 5180–00–NIB–0009—Tool Kit, Peel & Stick NonSkid Kit Application, Repair and Maintenance, All Kits
NPA: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: Department of Homeland Security, U.S. Coast Guard, HQ Contract Operations, Washington, DC
Coverage: C-List for 100% of the requirement of the U.S. Coast Guard as aggregated by the U.S. Coast Guard, Lockport, LA.
NSN: M.R. 1031—Rag, Cleaning, Red
NSN: M.R. 1032—Rag, Cleaning, White
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
NSN: M.R. 1157—Set, Knife and Peeler, Ceramic, Kitchen Samurai
NSN: M.R. 1150—Set, Mold, Cupcake, Red, Giant Cupcake, 3pc
NSN: M.R. 1151—Set, Pan, Bake, Perfect Brownie Pan, 3pc
NSN: M.R. 1152—Set, Pasta Cooker, Blue, Pasta Express, 7pc
NSN: M.R. 1155—Glove, Oven, Flexi
NSN: M.R. 1156—Device, Cutting, Multi-Use, Green, Snip It
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.
NSN: 7045–00–NIB–0348—Encrypted Compact Disc, Recordable, 25 CDs on Spindle, Silver
NSN: 7045–00–NIB–0349—Encrypted Digital Video Disc, Recordable, 25 DVDs on Spindle, Silver
NPA: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
Coverage: A-List for the Total Government Requirement as aggregated by the Defense Logistics Agency, Philadelphia, PA.

Services

Service Type/Location:
Laundry Services, U.S. Naval Hospital & Naval Dental Clinic Base, Farenholt Road, Agana Heights, GU.
NPA: iCAN Resources, Inc., Dededo, GU
Contracting Activity: Dept of the Navy, FISC Pearl Harbor, HI
Service Type/Location:
Laundry Services, Department of Veterans Affairs, Indianapolis, IN. (Offsite: 118 E Court Street, Paris, IL)
NPA: Human Resources Center of Edgar and Clark Counties, Paris, IL
Contracting Activity: Department of Veterans Affairs, VISN 11, Indianapolis, IN

Deletions

On 4/8/2011 (76 FR 19750–19751), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Anti-fatigue Mat, Recycled Content
NSN: 7220–01–582–6232—Gray, 2x3′
NSN: 7220–01–582–6234—Gray, 3x5′
NPA: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, Fort Worth, TX

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2011–20561 Filed 8–11–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions—Correction

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Correction of Notice 76 FR 47564–47565.

SUMMARY: This action corrects a Service Type that was incorrectly published in the, August 5, 2011 **Federal Register** notice, 76 FR 47564–47565.

DATES: *Effective Date: 9/5/2011.*

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

Service Type/Location:
Contact Center Services, Human Resources Command,1600 Spearhead Division Avenue, Fort Knox, KY.
NPAs: InspiriTec, Inc., Philadelphia, PA (Prime Contractor), Employment Source, Inc., Fayetteville, NC (Subcontractor).
Contracting Activity: Dept of the Army, W6QM FT KNOX CONTR CTR, Fort Knox, KY.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2011–20560 Filed 8–11–11; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, (PRA 95) (44 U.S.C. chapter 35). The Corporation requested that OMB review and approve its emergency request by August 15, 2011, for a period of six months. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Amy Borgstrom, (202) 606–6930 or by e-mail at *aborgstrom@cns.gov.*

Unfortunately, since the Corporation requested OMB's approval of this emergency request by August 15, 2011, there will be not enough time for the public to provide comments through this **Federal Register** Notice before the approval date. Therefore, there will be no comment period for this request.

Type of Review: Emergency request.

Agency: Corporation for National and Community Service.

Title: AmeriCorps State and National Application Instructions.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations and congregations.

Total Respondents: 600.

Frequency: One time.

Average Time per Response: 40 hours.

Estimated Total Burden Hours: 24,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The Corporation for National and Community Service (the ''Corporation'') has amended several provisions relating to the AmeriCorps national service program, and has added rules to clarify the Corporation's requirements for national performance measures, fixed amount grants, and grantmaking criteria to align with the Edward M. Kennedy Serve America Act. We also have a new Strategic Plan in place. The implementation of these changes through the rulemaking process includes ensuring the Corporation's information collection instruments accurately reflect these issues. In an effort to be compliant while maintaining functions essential to the operations of each state commission and AmeriCorps programs, we are therefore submitting the enclosed request under 5 CFR 1320.13 to OMB for emergency processing and approval of information collection activities. This submission includes one set of Application Instructions for AmeriCorps State and National grants.

Since the passage of the Edward M. Kennedy Serve America Act, many Americans have expressed a renewed desire to serve their country by volunteering in their community. Now, we have an obligation to ensure that Americans have quality opportunities to serve. Moreover, as the Corporation and OMB have previously communicated, the Corporation is working hard to ensure it is fully compliant with the Paperwork Reduction Act and with OMB's information collection policies and procedures.

If you have any questions, contact Amy Borgstrom at 202–606–6930 or *aborgstrom@cns.gov.* We sincerely thank you for your consideration of this request and your willingness to work with us in remaining fully compliant with the Paperwork Reduction Act.

Dated: August 9, 2011.

Lois Nembhard,

Deputy Director, AmeriCorps State and National.

[FR Doc. 2011–20545 Filed 8–11–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Surplus Properties

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: This amended notice provides information regarding the properties that have been determined surplus to the United States needs in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved, and following screening with Federal agencies and Department of Defense components. This Notice amends the Notice published in the **Federal Register** on August 7, 2009 (74 FR 39680).

DATES: Effective August 12, 2011, by updating the acreage and contact information as indicated below for the following surplus property.

FOR FURTHER INFORMATION CONTACT: Headquarters, Department of the Army, Assistant Chief of Staff for Installation Management, Base Realignment and Closure (BRAC) Division, Attn: DAIM–BD, 600 Army Pentagon, Washington, DC 20310–0600, (703) 601–2418. For information regarding the specific property listed below, contact the Army BRAC Division at the mailing address above or at *BRAC2005@hqda.army.mil.*

SUPPLEMENTARY INFORMATION: Under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, the Defense Base Closure and Realignment Act of 1990, as amended, and other public benefit conveyance authorities, this surplus property may be available for conveyance to State and local governments and other eligible entities for public benefit purposes. Notices of interest from representatives of the homeless, and other interested parties located in the vicinity of any listed surplus property should be

submitted to the recognized Local Redevelopment Authority (LRA). Additional information for this or any Army BRAC 2005 surplus property may be found at *http://www.hqda.army.mil/acsimweb/brac/braco.htm.*

Surplus Property List

1. Addition

District of Columbia

Walter Reed Army Medical Center, (a portion of, comprising approximately 67.5 acres) 6900 Georgia Ave, NW., Washington, DC 20307.

The Army's Base Transition Coordinator is Mr. Randy Treiber whose e-mail address is *randal.treiber@us.army.mil* and his telephone number is (202) 782–7389. His mailing address is Walter Reed Army Medical Center, Base Transition Coordinator, 6900 Georgia Ave, NW., Washington, DC 20307.

The Government of the District of Columbia has been recognized as the LRA. The LRA is located at 1350 Pennsylvania Avenue, NW., Suite 317, Washington, DC 20004. The LRA's point of contact is Mr. Eric D. Jenkins, Office of the Deputy Mayor for Planning and Economic Development. He can be reached for information by calling (202) 727–6365.

Authority: This action is authorized by the Defense Base Closure and Realignment Act of 1990, Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. 101–510; the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. 103–421; and 10 U.S.C. 113.

Dated: August 4, 2011.

Carla K. Carlson,

Assistant for Construction.

[FR Doc. 2011–20517 Filed 8–11–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Study on the Feasibility of Deepening Charleston Harbor

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Charleston District, intends to prepare a Draft Environmental Impact Statement (DEIS), for the Charleston Harbor Deepening Study (Post-45 study). The purpose of this DEIS and feasibility study is to investigate modification of the existing Charleston Harbor project in the interest of navigation improvements.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to: Mark Messersmith, (843) 329–8162, *Chas-Post45–Comments@usace.army.mil,* 69 A Hagood Ave., Charleston, SC 29403. To submit comments please see our Web site at: *http://www.sac.usace.army.mil/?action=programs.post45.*

SUPPLEMENTARY INFORMATION:

a. Background: Since 2000, the total value of international trade has risen by over 40 percent and it is becoming a larger part of our national economy. The combined value of foreign trade (imports and exports) represented 13 percent of GDP in 1990, rising to nearly 22 percent in 2006. If this trend continues, it is projected that the value of U.S. foreign trade will be equivalent to 35 percent of the Nation's GDP in 2020 and 60 percent in 2030. Marine transportation will become even more important to our economy as 95 percent of America's foreign trade is moved by ship. To sustain expected growth, it is estimated the U.S. must expand its overall port capacity by 10 percent annually. This would require port expansion, mainly on the West Coast, Gulf Coast and South Atlantic. That is the equivalent of adding capacity equal to the Port of Oakland every year.

The Charleston port district's ranking as a global trading port is consistently in the top ten nationally in container traffic and cargo value. In 2009, the Charleston port district was ranked ninth (out of 200 deep-draft ports) in cargo value, and ninth (out of 80 container ports) in container traffic.

Shipping trends in Charleston show adherence to projections for considerable growth in ship size, in all three dimensions, draft, beam, and length. As economies of scale and improved vessel technologies have driven ship sizes larger, the world's port infrastructure must be rapidly expanded in channel depths and widths and terminal capacity to accommodate larger ships. The number of ports able to handle larger vessels around the world is growing, and, most importantly, the Panama Canal is currently expanding lock capacity to handle ships of 25% greater draft (up to 50 ft), 52% greater beam (up to 160 feet), and 30% greater length (up to 1250 feet). Ships have been under construction for several years to be ready for the new canal capacity when the new Panama Canal locks open in 2014.

b. Objectives: There is opportunity to deepen the navigation channel at Charleston Harbor to accommodate larger container vessels. Particularly important is the great increase in the deployment of those vessels, which is occurring now and expected to increase when the Panama Canal Expansion Project is completed in 2014. These larger vessels, commonly referred to in the shipping industry as the ''Super Post-Panamax'' vessels, are expected to comprise greater percentages of vessel fleet composition over the next several decades. This transition to larger vessels is expected to occur rapidly and current Panamax vessels are expected to no longer be used in the Asia service by 2024. Additional depth would be required to serve existing users of Charleston Harbor by that time, as the transition from the current Panamax fleet is complete.

c. Alternatives: The reconnaissance level alternatives analysis does not constitute a complete analysis of the full array of potential alternatives nor does it define a preferred alternative or National Economic Development (NED) plan. Detailed analyses are expected to be conducted in the proposed feasibility phase and would likely involve evaluation of all alternatives to address the problems and opportunities. The array of alternatives that may be examined in the feasibility study would likely include navigational improvements to some or all of the channels in Charleston Harbor, including (1) deepening channel(s) up to 50 feet MLLW or more, (2) widening channel(s), (3) adjusting existing channel alignments/bend easing, and (4) widening and/or lengthening turning basins.

During the feasibility phase, Charleston Harbor will be evaluated to identify the extent to which the array of alternatives will be applied to each reach of the Federal Navigation Channel. Problems and opportunities pertinent to each reach will be identified and investigated. A matrix of reach specific alternative plans will be developed and evaluated to produce a recommended plan for improvements to Charleston Harbor. This process will include the appropriate level of engineering, economic, and environmental analyses to identify all possible benefits and impacts associated with the projected navigational improvements.

Additional channel depth would allow current and future shippers to more fully utilize larger class vessels and would reduce future anticipated congestion. The current depth of the existing inner harbor channel is 45 feet MLLW. The Entrance Channel from the Atlantic Ocean through the jetties is 47

feet MLLW deep to allow for wave action.

d. Issues: The DEIS will consider the possible effects of channel deepening/widening on aquatic resources, loss of wetlands, as well as other project related impacts on protected species, water quality, fish and wildlife resources, cultural resources, essential fish habitat, socio-economic resources, coastal processes, aesthetics, and other impacts identified through scoping, public involvement, and agency coordination.

e. Scoping process: The scoping process as outlined by the Council on Environmental Quality would be utilized to involve Federal, State, and local agencies, and other interested persons and organizations. A scoping letter will be sent to the appropriate parties regarding issues to consider during the study. Public scoping meetings would be held throughout the process. Exact dates, times, and locations will be published in local papers.

Dated: July 29, 2011.

Edward P. Chamberlayne,

Lieutenant Colonel, EN, Commander, U.S. Army Engineer District, Charleston.

[FR Doc. 2011–20518 Filed 8–11–11; 8:45 am]

BILLING CODE 3720–58–P

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Methodology for the Delaware River and Bay Integrated List Water Quality Assessment

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the methodology proposed to be used in the 2012 Delaware River and Bay Integrated List Water Quality Assessment is available for review and comment.

DATES: Comments must be received in writing by close of business on August 31, 2011.

ADDRESSES: Comments will be accepted via e-mail to *john.yagecic@drbc.state.nj.us;* via fax to 609–883–9522; by U.S. Mail to DRBC, *Attn:* Water Quality Assessment 2012, P.O. Box 7360, West Trenton, NJ 08628–0360; via private carrier to DRBC, Attn: Integrated Assessment 2012, 25 State Police Drive, West Trenton, NJ 08628–0360; or by hand. All submissions should have the phrase ''Water Quality Assessment 2012'' in the subject line and should include the name, address (street address optional) and affiliation, if any, of the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. John Yagecic, Supervisor, Standards and Assessment Section, DRBC Modeling, Monitoring and Assessment Branch, via e-mail to *john.yagecic@drbc.state.nj.us* or by telephone to 609–883–9500, ext. 271.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission (''DRBC'' or ''Commission'') is an interstate and federal compact agency that was created in 1961 by concurrent legislation of the States of Delaware, New Jersey, and New York, the Commonwealth of Pennsylvania and the United States Government for purpose of jointly managing the water resources of the Delaware River Basin.

DRBC currently is compiling data for the *2012 Delaware River and Bay Water Quality Assessment Report* required by the federal Clean Water Act (''CWA''). The 2012 Assessment will present the extent to which waters of the Delaware River and Bay are attaining designated uses in accordance with Section 305(b) of the CWA and the Commission's Water Quality Regulations (18 CFR part 410) and will identify impaired waters, which consist of waters that exceed surface water quality standards.

The assessment methodology to be used in the 2012 Assessment is available for review at the following url: *http://www.state.nj.gov/drbc/Methodology-WQAssess-draft_July2011.pdf.*

Dated: August 8, 2011.

Pamela M. Bush, Esquire,

Commission Secretary.

[FR Doc. 2011–20512 Filed 8–11–11; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before September 12, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: August 8, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Talent Search and Educational Opportunity Centers Annual Performance Report.

OMB Control Number: 1840–0561.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit; Private sector.

Total Estimated Number of Annual Responses: 596.

Total Estimated Annual Burden Hours: 3,576.

Abstract: Talent Search and Educational Opportunity Centers grantees must submit the report annually. The reports provide the U.S. Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program

regulations. The data collection is also aggregated to provide national information on project participants and program outcomes.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4565. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–20564 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before September 12, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: August 8, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: NEW.

Title of Collection: Employment Certification for Public Service Loan Forgiveness.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,073,643.

Total Estimated Annual Burden Hours: 1,036,822.

Abstract: This form serves as the means by which eligible borrowers in the William D. Ford Federal Direct Loan Program indicate eligible employment for the purpose of final forgiveness under the Public Service Loan Forgiveness Program. The Department and its Direct Loan Program servicers will use the information collected on the Employment Certification for Public Service Loan Forgiveness form to determine whether a borrower has worked for a qualified employer during the certification period and whether payments made against a borrower's outstanding Direct Loan balance were qualifying payments for the purpose of the Public Service Loan Forgiveness Program.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4563. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–20565 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities

AGENCY: Office of Special Education Programs, Department of Education.

ACTION: Notice.

Overview Information

Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—National Center for Students with Disabilities Who Require Intensive Interventions. Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326Q.

DATES: *Applications Available:* August 12, 2011.

Deadline for Transmittal of Applications: September 12, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and

implementing activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1463 and 1481(d)).

Absolute Priority: For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Center for Students With Disabilities Who Require Intensive Interventions

Background

Despite efforts by school personnel to improve academic and school-based behaviors, many students with disabilities continue to struggle in school. For example, 65 percent of fourth graders with disabilities and 62 percent of eighth graders with disabilities who participated in the 2009 National Assessment of Educational Progress (NAEP) scored below the basic level in reading achievement in contrast with 33 percent of fourth graders and 25 percent of eighth graders without disabilities (U.S. Department of Education, 2010). Results from the National Longitudinal Transition Study-2 (NLTS2) indicate that students with disabilities, on average, are more than three years behind grade level in reading and mathematics abilities. Further, approximately 20 percent of students with disabilities have difficulty controlling their behavior in class, and 35 percent of students with disabilities have been involved in some type of disciplinary action (Wagner *et al.,* 2003).

Many students in a typical classroom setting make academic progress and improve their behavior when they receive high-quality scientifically based instruction and supports. Those students who do not make progress under such conditions may require intensive interventions. Intensive interventions are interventions that are specifically designed to address a student's persistent learning or behavior difficulties and are implemented with greater frequency than in a typical classroom setting and for an extended duration, either individually or in small groups (Wanzek & Vaughn, 2010). Intensive interventions require educators to have knowledge and skills in implementing multiple evidence-based interventions. In addition, more than what is required of educators in a typical classroom setting, intensive interventions require that educators use a student's ongoing assessment data to continually evaluate the effectiveness of their instructional approach in improving the student's learning or behavioral performance. Based on the student's performance, an educator will need to change intervention approaches, when needed, to meet a student's specific learning needs (Fuchs & Fuchs, 2009).

Research has demonstrated the effectiveness of intensive interventions in improving reading (*e.g.,* Allor, Mathes, Roberts, Cheatham, & Champlin, 2010; Kamps, Greenwood, Wills, Veerkamp, & Kaufman, 2008; Mautone, DuPaul, Jitendra, Tresco, Junod, & Volpe, 2009; Scammacca, N., Vaughn, S., Roberts, G., Wanzek, J., & Torgesen, J. K., 2007; Vaughn, Denton, & Fletcher, 2010; Wanzek & Vaughn, 2010), mathematics (*e.g,* Fuchs, Fuchs, Powell, Seethaler, Cirino, & Fletcher, 2008; Gersten *et al.,* 2009) and behavior (*e.g.,* Eikeseth, Smith, Jahr, & Eldevik, 2002; Fairbanks, Sugai, Guardino, & Lathrop, 2007; Freeman *et al.,* 2006; O'Connor & Healy, 2010) for students at-risk of, or identified as, having disabilities. In addition, the use of a student's assessment data to make instructional changes that result in improved student outcomes has been well-documented (*e.g.,* see Fuchs & Fuchs, 1986; Shapiro, Edwards, & Zigmond, 2005; Stecker, Fuchs, & Fuchs, 2005). Furthermore, there is evidence that training on, and supports for, using student's ongoing assessment data can improve an educator's ability to plan and identify appropriate instructional or behavioral programs (*e.g.,* Cook *et al.,* 2007; Roehrig *et al.,* 2008; Stecker *et al.,* 2005).

Notwithstanding this body of knowledge, multiple studies have documented that educators find it difficult to implement individualized instructional or behavioral interventions for a variety of reasons (*e.g.,* Kern, Hilt-Panahon, & Sokol, 2009; Vaughn, Moody, & Schumm, 1998; Swanson & Vaughn, 2010). For example, educators report that they have not received adequate professional development on how to adapt materials, activities, and strategies for individualized instruction (*e.g.,* Boardman *et al.,* 2005; Bryant, Linan-Thompson, Ugel, Hamff, & Hoegen, 2001; Roehrig, Duggar, Moats, Glover, & Mincey, 2008; Schumm & Vaughn, 1995). Similarly, educators report gaps in their ability to effectively use student data to make appropriate individualized instructional or behavioral intervention changes (*e.g.* Bambara, Nonnemacher, & Kern, 2009; Roehrig *et al.,* 2008; Stecker *et al.,* 2005).

Local educational agencies (LEAs) struggle with how best to support schools' and educators' implementation of intensive interventions (Boardman, Arguelles, Vaughn, Hughes, & Klingner, 2005). Implementing and sustaining evidence-based and intensive interventions requires support at multiple levels in the education system. Several components of State, LEA, and school systems have been identified as important supports for successful implementation and sustainability of interventions; these components include staff development, leadership support, and organizational resources (*e.g.,* Bambara *et al.,* 2009; Denton, Vaughn, & Fletcher, 2003; Durlak & DuPre, 2008; Fixsen *et al.,* 2005; Lewis, Barrett, Sugai & Horner, 2010; Sadler & Sugai, 2009; Sugai *et al.,* 2010). If implementation supports (*e.g.,* staff development) are not provided at multiple system levels, educators' capacity to implement intensive interventions may be limited and, in turn, may negatively affect a student's academic and behavioral outcomes. The optimal goal for educators in working with students with learning or behavior disabilities is not only to ensure that students make progress in acquiring the necessary skills to succeed in school but also to accelerate the acquisition of such skills so that students master grade-level content. LEAs need assistance to support schools and educators in implementing and sustaining effective intensive academic and behavioral interventions for students with disabilities.

The Office of Special Education Programs (OSEP) proposes to support a new national center that will focus on intensive academic and behavioral interventions for students with disabilities with persistent learning or behavior difficulties who are not those with the most significant cognitive disabilities.

Priority

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National Center for Students with Disabilities Who Require Intensive Interventions (Center) that will: (1) Identify and disseminate evidence-

based [1] intensive interventions [2] or sets of interventions in the areas of reading, mathematics, and behavior for students with disabilities with persistent learning or behavioral difficulties who are not those with the most significant cognitive disabilities (the targeted students); (2) identify LEA and school system components (*e.g.,* staff development, leadership support, and organizational resources) that affect the implementation and sustainability of effective intensive academic and behavioral interventions; (3) develop universally available resources and strategies for LEAs to use in supporting schools and educators in the implementation of evidence-based intensive interventions for the targeted students; and (4) provide intensive TA to 12 LEAs to assist them in building their capacity to support schools and educators' implementation of intensive reading, mathematics, and behavior interventions for the targeted students.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements

An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web sites provide more information on logic models: *http://www.researchutilization.org/matrix/logicmodel_resource3c.html* and *http://www.tadnet.org/model_and_performance.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A plan for recruiting and selecting 12 LEAs, in a minimum of three States, including one or more high-need LEAs [3] and one or more rural LEAs in each State,[4] to receive intensive technical assistance in building capacity to support schools and educators to implement intensive interventions for the targeted students. The plan must include the criteria the Center will use to select LEAs to receive the intensive technical assistance;

(e) A budget for a summative evaluation to be conducted by an independent third party;

(f) A budget for attendance at the following:

(1) A one and one half-day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) Two, two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(g) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

Knowledge Development Activities

(a) Review available research on intensive academic and behavioral interventions for the targeted students, including research on LEA and school system components (*e.g.,* staff development, leadership support, and organizational resources) that facilitate or limit the implementation and sustainability of intensive interventions. In conducting this review of studies and related evidence, the Center must use standards that are consistent with those used by the What Works Clearinghouse (*http://ies.ed.gov/ncee/wwc/*) and the definitions of *strong evidence* and *moderate evidence* contained in the notice of final priorities and definitions for discretionary grants programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) (*http://www2.ed.gov/legislation/FedRegister/other/2010–4/121510b.html*). If the Center determines that it cannot conduct the review using these standards, it must develop and use other rigorous standards.

(b) Based on the research review conducted under paragraph (a) of these *Knowledge Development Activities,* as well as ongoing input from OSEP and the advisory committee established under paragraph (a) of the *Leadership and Coordination Activities,* prepare state-of-knowledge papers that synthesize the research on—

(1) Intensive academic and behavioral interventions (*e.g.,* programs, practices, or instructional approaches) for the targeted students, to be completed in the first six months of the project period; and

(2) Professional development models that improve the implementation of intensive academic and behavioral interventions for the targeted students, including strategies for how to effectively use student data to make instructional or behavioral intervention changes and how to adapt materials, activities, and strategies for individualized instruction, to be completed in the first year of the project period; and

(3) LEA and school system components (*e.g.,* staff development,

[1] For the purposes of this priority, *evidence-based* means practices for which there is ''strong evidence'' or ''moderate evidence'' of effectiveness as defined in the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) (*http://www2.ed.gov/legislation/FedRegister/other/2010–4/121510b.html*).

[2] For purposes of this priority, *intensive interventions* or *intensive academic and behavioral interventions* means interventions that are specifically designed to address a student's persistent learning or behavior difficulties and are implemented with greater frequency than in a typical classroom setting and for an extended duration, either individually or in small groups.

[3] Section 2102(3) of the ESEA defines a *high-need LEA* as an LEA—(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 9101(33) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and (b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

[4] *Rural LEA* means an 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. Applicants may determine whether a particular LEA is eligible for these programs by referring to the information on the following Department Web sites. For SRSA: *http://www2.ed.gov/programs/reapsrsa/index.html* For RLIS: *http://www.ed.gov/programs/reaprlisp/eligibility.html.*

leadership support, and organizational resources) that facilitate or limit the implementation and sustainability of intensive interventions, including in high-need and rural LEAs, to be completed by the end of the second year of the project period.

These papers must present the research in a format that is accessible to the Center's relevant audiences, including LEAs, educators, and researchers. The papers must also provide useful recommendations, with specific reference to the evidence base upon which the recommendations are founded that can be incorporated into the Center's technical assistance activities. The Center must submit these papers for review to the advisory committee, and, once the papers are approved by the advisory committee, disseminate the papers according to the dissemination strategy developed under paragraph (f) of the *Leadership and Coordination Activities.*

(c) Identify and conduct site analyses of LEAs and schools that are implementing evidence-based intensive interventions for the targeted students in the areas of reading, mathematics, or behavior and that might serve as potential model demonstration sites. The Center must identify and describe the intensive interventions being implemented, including the evidence base for these interventions; student outcomes, including academic achievement and behavior; and the system components (*e.g.,* staff development, leadership support, and organizational resources at the sites) within each site that facilitate or limit the implementation and sustainability of intensive interventions.

(d) Prepare papers summarizing the analyses conducted under paragraph (c) of these *Knowledge Development Activities,* submit the papers for review to the advisory committee established under paragraph (a) of the *Leadership and Coordination Activities,* and, once the papers are approved by the advisory committee, disseminate the papers according to the dissemination strategy developed under paragraph (f) of the *Leadership and Coordination Activities.*

Technical Assistance and Dissemination Activities

(a) Develop for distribution and use in technical assistance (TA) activities a ''blueprint'' of implementation components at the LEA level that support educators' use of intensive academic and behavioral interventions for the targeted students, based on current research and the *Knowledge Development Activities* performed by the Center. The Center must ensure that the TA it develops under this paragraph is informed by research and evidence-based practices, supplemented in subsequent years by the knowledge gained from the research syntheses and site analyses performed under the *Knowledge Development Activities* section of this priority.

(b) Develop training materials for LEAs (including high-need and rural LEAs) on how to build their capacity to support the implementation of intensive interventions for the targeted students.

(c) Identify, or develop if appropriate, and evaluate self-assessment tools that can be used by schools and LEAs to evaluate the implementation of, and support for, intensive academic and behavioral interventions for the targeted students.

(d) Provide 12 LEAs in a minimum of three States with intensive TA that is designed to assist them in building their capacity to support schools and educators' implementation of intensive reading, mathematics, and behavior interventions for the targeted students.

(f) Develop and coordinate a national technical assistance and dissemination (TA&D) network comprised of a cadre of experts that the Center will use to provide TA to LEAs to assist them in building their capacity to support schools and educators in implementing and sustaining intensive academic and behavioral interventions for the targeted students.

(g) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).

(h) Prepare and disseminate reports, documents, and other materials on intensive academic and behavioral interventions and related topics as requested by OSEP for specific audiences, including families, educators, administrators, policymakers, and researchers. In consultation with the OSEP Project Officer, make selected reports, documents, and other materials available in both English and Spanish.

Leadership and Coordination Activities

(a) Establish and maintain an advisory committee to review activities, products, and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet on an annual basis in Washington, DC, and consist of representatives of SEAs and LEAs, individuals with disabilities, educators, parents of individuals with disabilities, representatives from institutions of higher education, and researchers. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(b) Communicate and collaborate on an ongoing basis with OSEP-funded projects, including the Response to Intervention Center, Center on Positive Behavioral Supports, Center on State Implementation and Scaling-up of Evidence-based Practices, the IDEA Partnership Project, the Regional Resource Centers, and the National Parent Technical Assistance Center. This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events.

(c) Participate in, organize, or facilitate communities of practice that align with the needs of the project's target audience. Communities of practice should align with the project's objectives to support discussions and collaboration among key stakeholders. The following Web site provides more information on communities of practice: *http://www.tadnet.org/communities.*

(d) Prior to developing any new product, submit a proposal for the product to the TACC database for approval from the OSEP Project Officer. The development of new products should be consistent with the product definition and guidelines posted on the TACC Web site (*http://www.tadnet.org*).

(e) Contribute, on an ongoing basis, updated information on the Center's approved and finalized products and services to a database at TACC.

(f) Coordinate with the National Dissemination Center for Individuals with Disabilities to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(g) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication.

Extending the Project for a Fourth and Fifth Year

The Secretary may extend the Center for up to two additional years beyond its original project period of 36 months if a grantee is achieving the intended outcomes of the grant, shows improvement against baseline measures on performance indicators, and is making a positive contribution to the implementation and sustainability of intensive interventions.

References

Allor, J. H., Mathes, P. G., Roberts, J. K.,

Cheatham, J. P., & Champlin, T. M. (2010). Comprehensive reading instruction for students with intellectual disabilities. *Psychology in the Schools, 47,* 445–466.

Bambara, L. M., Nonnemacher, S., & Kern, L. (2009). Sustaining school-based individualized positive behavior support. *Journal of Positive Behavior Interventions, 11,* 161–176.

Berkeley, S., Bender, W. N., Peaster, L. G., & Saunders, L. (2009). Implementation of Response to Intervention: A snapshot of progress. *Journal of Learning Disabilities, 42,* 85–95.

Boardman, A. G., Arguelles, M. E., Vaughn, S., Hughes, M. T., & Klingner, J. (2005). Special education teachers' views of research-based practices. *The Journal of Special Education, 39,* 168–180.

Bryant, D. P., Linan-Thompson, S., Ugel, N., Hamff, A., & Hougen, M. (2001). The effects of professional development on middle school general and special education teachers on implementation of reading strategies in inclusive content. *Learning Disability Quarterly, 24,* 251–264.

Cook, C. R., Crews, S. D., Wright, D. B., Mayer, G. R., Gale, B., Kraemer, B., & Gresham, F. M. (2007). Establishing and evaluating the substantive adequacy of positive behavioral support plans. *Journal of Behavioral Education,* 16, 191–206.

Denton, C. A., Vaughn, S., & Fletcher, J. M. (2003). Bringing research-based practice in reading intervention to scale. *Learning Disabilities Research & Practice, 18,* 201–211.

Durlak, J. A., & DuPre, E. P. (2008). Implementation matters: A review of research on the influence of implementation on program outcomes and the factors affecting implementation. *American Journal of Community Psychology, 41,* 327–350.

Eikeseth, S., Smith, T., Jahr, E., & Eldevik, S., (2002). Intensive behavioral treatment at school for 4-to-7-year old children with autism. *Behavior Modification, 26,* 49–68.

Fairbanks, S., Sugai, G., Guardino, D., & Lathrop, M. (2007). Response to intervention: Examining classroom behavior support in the second grade. *Exceptional Children, 73,* 288–310.

Fixsen, D. L., Naoom, S. F., Blasé, K. A., Friedman, R. M., & Wallace, F. (2005). *Implementation research: A synthesis of the literature.* Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute.

Freeman, R., Eber, L., Anderson, C., Irvin, L., Horner, R., Bounds, M., & Dunlap, G. (2006). Building inclusive school cultures using school-wide positive behavior support: Designing effective individual support systems for students with significant disabilities. *Research and Practice for Persons with Severe Disabilities, 31,* 4–17.

Fuchs, L. S. & Fuchs, D. (1986). Effects of systematic formative evaluation: A meta-analysis. *Exceptional Children, 53,* 199–208.

Fuchs, L. S. & Fuchs, D. (2009). Creating opportunities for intensive intervention for students with learning disabilities. *Teaching Exceptional Children, 42,* 60–62.

Fuchs, D., Fuchs, L. S. & Stecker, P. M. (2010). The ''blurring'' of special education in a new continuum of general education placements and services. *Exceptional Children, 76,* 301–323.

Fuchs, L. S. & Fuchs, D., Powell, S. R., Seethaler, P. M., Cirino, P. T., & Fletcher, J. M. (2008). Intensive intervention for students with mathematics disabilities: Seven principles of effective practice. *Learning Disabilities Quarterly, 31,* 79–92.

Gersten, R., Beckmann, S., Clarke, B., Foegen, A., Marsh, L., Star, J. R., & Witzel, B. (2009). *Assisting students struggling with mathematics: Response to Intervention (RtI) for elementary and middle schools* (NCEE 2009–4060). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education. Retrieved November 1, 2010 from *http://ies.ed.gov/ncee/wwc/publications/practiceguides/.*

Kamps, D., Abbott, M., Greenwood, C., Wills, H., Veerkamp, M., & Kaufman, J. (2008). Effects of small-group reading instruction and curriculum differences for students most at risk in kindergarten: Two-year results for secondary- and tertiary-level interventions. *Journal of Learning Disabilities, 41,* 101–114.

Kern, L., Hilt-Panahon, A., & Sokol, N. G. (2009). Further examining the triangle tip: Improving support for students with emotional and behavioral needs. *Psychology in the Schools, 46,* 18–32.

Lewis, T.J., Barrett, S., Sugai, G., Horner, R. H. (2010). *Blueprint for schoolwide positive behavior support training and professional development.* Eugene, OR: National Technical Assistance Center on Positive Behavior Interventions and Support. Retrieved from *http://www.pbis.org.*

Mautone, J. A., DuPaul, G. J., Jitendra, A. K., Tresco, K. E., Junod, R. V., & Volpe, R. J. (2009). The relationship between treatment integrity and acceptability of reading interventions for children with attention-deficit/hyperactivity disorder. *Psychology in the Schools, 46,* 919–931.

O'Connor, A. B., & Healy, O. (2010). Long-term post-intensive behavioral intervention outcomes for five children with autism spectrum disorder. *Research in Autism Spectrum Disorders, 4,* 594–604.

Roehrig, A. D., Duggar, S. W., Moats, L., Glover, M., & Mincey, B. (2008). When teachers work to use progress monitoring data to inform literacy instruction: Identifying potential supports and challenges. *Remedial and Special Education, 29,* 364–382.

Sadler, C., & Sugai, G. (2009). Effective behavior and instructional support: A district model for early identification and prevention of reading and behavior problems. *Journal of Positive Behavior Interventions, 11,* 35–46.

Scammacca, N., Vaughn, S., Roberts, G., Wanzek, J., & Torgesen, J. K. (2007). Extensive reading interventions in grades k–3: From research to practice. Portsmouth, N.H.: RMC Research Corporation, Center on Instruction.

Schumm, J. S., & Vaughn, S. (1995). Meaningful professional development in accommodating students with disabilities. *Remedial and Special Education, 16,* 344–353.

Shapiro, E. S., Edwards, L., & Zigmond, N. (2005). Progress monitoring of mathematics among students with learning disabilities. *Assessment for Effective Intervention, 30,* 15–32.

Stecker, P. M., Fuchs, L. S., & Fuchs, D. (2005). Using curriculum-based measurement to improve student achievement: Review of research. *Psychology in the Schools, 42,* 795–819.

Sugai, G., Horner, R.H., Algozzine, R., Barrett, S., Lewis, T., Anderson, C., Bradley, R., Choi, J. H., Dunlap, G., Eber, L., George, H., Kincaid, D., McCart, A., Nelson, M., Newcomer, L., Putnam, R., Riffel, L., Rovins, M., Sailor, W., Simonsen, B. (2010). *School-wide positive behavior support: Implementers' blueprint and self-assessment.* Eugene, OR: University of Oregon. Retrieved from *http://www.pbis.org.*

Swanson, E. A., & Vaughn, S. (2010). An observation study of reading instruction provided to elementary students with learning disabilities in the resource room. *Psychology in the Schools, 47,* 481–491.

U.S. Department of Education (2010). *National Assessment of Educational Progress* [Data file]. Retrieved from *http://nces.ed.gov/nationsreportcard/naepdata/.*

Vaughn, S., Denton, C. A., & Fletcher, J. M. (2010). Why intensive interventions are necessary for students with severe reading difficulties. *Psychology in the Schools, 47,* 32–444.

Vaughn, S., Moody, S. W., & Schumm, J. S. (1998). Broken promises: Reading instruction in the resource room. *Exceptional Children, 64,* 211–225.

Wagner, M., Marder, C., Blackorby, J., Cameto, R., Newman, L., Levine, P., & Davies-Mercier, E. (with Chorost, M., Garza, N., Guzman, A., & Sumi, C.) (2003). The achievements of youth with disabilities during secondary school. A report from the national longitudinal transition study—2 (NLTS2). Menlo Park, CA: SRI International. Retrieved November 12, 2010 from *http://www.nlts2.org/reports/2003_11/index.html.*

Wagner, M., Newman, L., Cameto, R., Levine, P., & Garza, N. (2006). An overview of findings from Wave 2 of the national longitudinal transition study—2 (NLTS2). Menlo Park, CA: SRI International. Retrieved November 12, 2010 from *http://ies.ed.gov/ncser/pubs/20063004/.*

Wanzek, J. & Vaughn, S. (2010). Tier 3 interventions for students with significant reading problems. *Theory Into Practice, 49,* 305–314.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 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 to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $1,500,000 for year one of the project period and $2,100,000 for each of years two through five of the project period.

Maximum Awards: We will reject any application that proposes a budget exceeding $1,500,000 for year one of the project period and $2,100,000 for years two through five for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with an optional additional 24 months based on performance.

Note: Applications must include plans for both the 36-month award and the 24-month extension.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.326Q.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 person or team listed under *Accessible Format* in section VIII of this notice.

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. You must limit the application narrative to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 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.
- 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

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, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: August 12, 2011.

Deadline for Transmittal of Applications: September 12, 2011.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, 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 competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of 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 at the following Grants.gov Web page: *http://www.grants.gov/applicants/get_registered.jsp*).

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

We are participating as a partner in the Governmentwide Grants.gov Apply site. The National Center for Students with Disabilities Who Require Intensive Interventions competition, CFDA number 84.326Q, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use 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.

You may access the electronic grant application for the National Center for Students with Disabilities Who Require Intensive Interventions competition 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 84.326, not 84.326Q).

Please note the following:

- Your participation in Grants.gov is voluntary.
- 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 competition 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 submit your application in paper format.
- If you submit your application electronically, 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.
- If you submit your application electronically, 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.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.326Q), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.326Q), 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. *Selection Criteria*: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *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).

3. *Additional Review and Selection Process Factors*: In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *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*: Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

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: Celia Rosenquist, U.S. Department of Education, 400 Maryland Avenue, SW., room 4052, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7373.

If you use a TDD, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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 on this site, you can limit your search to documents published by the Department.

Dated: August 8, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20583 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Publishers To Submit Tests for a Determination of Suitability for Use in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of invitation.

SUMMARY: The Department of Education (Department) announces the date by which test publishers must submit tests to the Secretary for review and approval for use in the National Reporting System for Adult Education (NRS).

FOR FURTHER INFORMATION CONTACT: John LeMaster, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11159, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–6218 or by e-mail: *John.LeMaster@ed.gov.*

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

SUPPLEMENTARY INFORMATION: The Department's Measuring Educational Gain in the National Reporting System for Adult Education regulations, 34 CFR part 462 (NRS regulations), include the procedures for determining the suitability of tests for use in the NRS.

Criteria the Secretary uses: In order for the Secretary to consider a test suitable for use in the NRS, the test must meet the criteria and requirements established in § 462.13 of the NRS regulations.

Submission Requirements

(a) A test publisher must comply with the requirements in § 462.11 of the NRS regulations when submitting an application.

(b) In accordance with § 462.10 of the NRS regulations, the deadline for transmittal of applications is October 1, 2011.

(c) Whether you submit your application by mail (through the U.S. Postal Service or a commercial carrier) or deliver your application by hand or by courier service, you must mail or deliver three copies of your application, on or before the deadline date, to the following address:

NRS Assessment Review, c/o American Institutes for Research, 1000 Thomas Jefferson Street, NW., Washington, DC 20007.

(d) If you submit your application by mail or commercial carrier, 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 Department of Education.

(e) 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.

(f) 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.

(g) If you submit your application by hand delivery, you (or a courier service) must deliver three copies of the application by hand, on or before 4:30:00 p.m., Washington, DC time on the application deadline date.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

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: August 8, 2011.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2011–20443 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Committee on Measures of Student Success

AGENCY: National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Committee on Measures of Student Success (Committee). The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: September 7, 2011.

Time: 9 a.m. to 5 p.m.

ADDRESSES: The Committee will meet in Washington, DC at 1990 K Street, NW., Washington, DC 20006, 8th Floor Conference Center.

FOR FURTHER INFORMATION CONTACT: Archie Cubarrubia, Designated Federal Official, Committee on Measures of Student Success, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006. E-mail: *Archie.Cubarrubia@ed.gov.* Telephone: (202) 502–7601.

SUPPLEMENTARY INFORMATION: The Committee is established to advise the Secretary of Education in assisting two-year degree-granting institutions of higher education in meeting the completion or graduation rate disclosure requirements outlined in section 485 of the Higher Education Act of 1965, as amended. Specifically, the Committee shall develop recommendations regarding the accurate calculation and reporting of completion or graduation rates of entering certificate/degree-seeking, full-time, undergraduate students by two-year degree granting institutions of higher education. The Committee may also recommend additional or alternative measures of student success that are comparable alternatives to the completion or graduation rates of entering degree-seeking full-time undergraduate students and that consider the mission and role of two-year degree granting higher education institutions. These recommendations shall be provided to the Secretary no later than April 2012.

The agenda for the meeting will include a discussion among Committee members regarding preliminary findings and recommendations for the Committee's final report to the Secretary.

Individuals interested in attending the meeting must register in advance because of limited space issues. To register, please send an e-mail request to *studentsuccess@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify John Fink at (202) 502–7328 no later than August 31, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Opportunities for public comment are available through the Committee's Web site at *http://www2.ed.gov/about/bdscomm/list/acmss.html.* Records are kept of all Committee proceedings and are available for public inspection on the Web site and at the National Center for Education Statistics, 1990 K Street, NW., Washington, DC 20006 from the hours of 9 a.m. to 5 p.m. E.S.T.

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John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2011–20508 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Office of the Inspector General, U.S. Department of Education.

ACTION: Notice of computer matching between the U.S. Department of Education and the U.S. Office of Personnel Management.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB)

guidelines on the conduct of computer matching programs, notice is hereby given of the establishment of a computer matching program between the U.S. Department of Education (ED) (recipient agency), and the U.S. Office of Personnel Management (OPM) (source agency). This matching program will become effective as explained in this notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protections Amendments of 1990 (Pub. L. 101–508) (Privacy Act), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs published in the **Federal Register** on June 19, 1989 (54 FR 25818), and OMB Circular No. A–130, Transmittal Memorandum #4, Management of Federal Information Resources (Nov. 28, 2000), we provide the following information:

1. Names of Participating Agencies

The U.S. Department of Education and the U.S. Office of Personnel Management.

2. Purpose of the Match

The purpose of this matching program between ED and OPM is to assist ED in detecting improper disbursements or overpayments of need-based student financial assistance funds under Title IV of the Higher Education Act of 1965, as amended (HEA), to Federal employees or their dependents. Overpayments may occur when Federal employee applicants underreport family income on the Free Application for Federal Student Aid (FAFSA). Financial need is determined by using a standard formula, established by Congress, to evaluate the financial information reported on the FAFSA and to determine the expected family contribution (EFC). A fundamental element in this standard formula is the student's or parents' income. This program will assist in verifying the income information reported by Federal employees on the FAFSA. ED will compare the FAFSA income to the income listed in OPM/GOVT–1 General Personnel Records System (71 FR 35342, June 29, 2006).

3. Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under the Inspector General Act (IG Act) (5 U.S.C. App.). Section 2 of the IG Act authorizes ED's Office of Inspector General (OIG) to conduct audits and investigations relating to the programs and operations of ED. Section 4(a)(3) of the IG Act provides that it shall be the duty and responsibility of each Inspector General to coordinate other activities carried out or financed by ED for the purpose of preventing and detecting fraud and abuse in its programs and operations. In addition, under section 4(a)(4) of the IG Act it is the responsibility of ED's Inspector General to coordinate relationships between ED and other Federal agencies with respect to all matters relating to the prevention and detection of fraud and abuse in programs and operations administered or financed by ED.

4. Categories of Records and Individuals Covered by the Match

The Office of Inspector General Data Analytics System (ODAS) (18–10–02), which downloads data from the National Student Loan Data System (NSLDS) (18–11–06) and contains FAFSA information that ED uses to determine eligibility for need-based student financial assistance, will be matched against OPM's General Personnel Records System, which maintains records of current and former Federal employees, including grades, dates, and salaries for all Federal positions held.

5. Effective Dates of the Matching Program

The matching program will become effective: (1) Thirty days after publication of this notice in the **Federal Register;** or (2) forty days after a report concerning the matching program has been transmitted to the Office of Management and Budget and the Congress, whichever date occurs last. The matching program will continue for 18 months and can be extended for an additional 12 months thereafter if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the computer matching agreement between ED and OPM, should contact Ms. Shelley Shepherd, Assistant Counsel to the Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245–7077. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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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: August 9, 2011.

Kathleen S. Tighe,

Inspector General.

[FR Doc. 2011–20608 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.325F]

National Center To Enhance the Professional Development of School Personnel Who Share Responsibility for Improving Results for Children With Disabilities; Final Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final extension of project period and waiver for the National Center to Enhance the Professional Development of School Personnel Who Share Responsibility for Improving Results for Children with Disabilities.

SUMMARY: The Secretary issues this notice to waive the requirements in the Education Department General Administrative Regulations (EDGAR) that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver enables the currently funded National Center to Enhance the Professional Development of School Personnel Who

Share Responsibility for Improving Results for Children with Disabilities to receive funding from October 1, 2011, through September 30, 2012.

DATES: The extension of project period and waiver is effective August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Shedeh Hajghassemali, U.S. Department of Education, 400 Maryland Avenue, SW., room 4091, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7506.

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

SUPPLEMENTARY INFORMATION: On June 7, 2011, the Department published a notice in the **Federal Register** (76 FR 32968–32969) proposing an extension of project period and a waiver of 34 CFR 75.250 and 75.261(a) and (c) in order to—

(1) Enable the Secretary to provide additional funds to the currently funded National Center to Enhance the Professional Development of School Personnel Who Share Responsibility for Improving Results for Children with Disabilities (Center) for an additional 12-month period, from October 1, 2011, through September 30, 2012; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

Public Comment

In response to our invitation in the notice of proposed project period and waiver, we did not receive any substantive comments. Generally, we do not address comments that do not express views on the substance of the notice of proposed extension of project period and waiver.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We received no substantive comments on the proposed extension of project period and waiver, and we have not made any substantive changes to the proposal. The Secretary has therefore determined to waive the delayed effective date to ensure a timely continuation grant to the entity affected.

Background

On June 19, 2006, the Department published a notice in the **Federal Register** (71 FR 35260) inviting applications for new awards for fiscal year (FY) 2006 for a National Professional Development Enhancement Center (Center), funded under the Personnel Development to Improve Services and Results for Children with Disabilities program authorized under section 662 of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1462.

The purpose of the Center is to provide pre-service training and professional development programs with high-quality instructional modules, materials, and resources in order to improve the overall quality of special education personnel training and professional development. The Center's goals are to help ensure that local educational agencies (LEAs) and schools have the capacity to implement school improvement programs; to close achievement gaps between students with disabilities and their peers; and to promote access to, and greater participation and progress in, the general education curriculum in the least restrictive environment for students with disabilities.

Based on the 2006 notice inviting applications, the Department made one award to Vanderbilt University to serve as the Center. The project period was 60 months, and it is scheduled to end on September 30, 2011.

We believe that it is not in the public interest to hold a new competition under this program in 2011 to fund a new Center as the Department is currently working on changes to the entire Personnel Development to Improve Services and Results for Children with Disabilities program. The program's new design will ensure that all projects the program supports are more strategically aligned with each other and that all projects better meet the needs of LEAs and schools for effective personnel. The Department is currently shaping these changes and expects to fund a new competition in FY 2012. However, we also have concluded that it is not in the public interest for the Center to have a lapse in the provision of the resources currently provided by the Center.

For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years; waives the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds; and is issuing a continuation award under 34 CFR 75.253 in the amount of $1,350,000 to Vanderbilt University (H325F060003) to operate the Center for an additional 12-month period.

Waiving these regulations and issuing this continuation award ensure that pre-service and professional development programs will continue to receive instructional modules, materials, and resources to improve the overall quality of training for individuals who provide services to students with disabilities.

With this final extension of project period and waiver, the Center will conduct the following activities during FY 2012:

(a) Build on the previous work of the project by developing additional products, and disseminating both new and previously developed products to an increased number of institutions of higher education, State educational agencies, LEAs, and any other entities that provide training and professional development to individuals who provide services to students with disabilities.

(b) Develop products and services based on the input obtained from the comprehensive needs-assessments, textbook analyses, focus groups, and consumer-input processes previously conducted by the Center that tapped the experiences and expertise of an array of partners, consumers, and advisors, including staff from the Department's Office of Special Education Programs. In addition, the Center must continue to seek recommendations from consumers and the Department to guide the development of enhancements (*e.g.*, interactive modules, case studies, activities, information briefs) and services (e.g., technical assistance to faculty, training of trainers, training sessions, and dissemination activities) provided by the Center.

(c) Continue to disseminate project products to instructors and their students through a cost-free, dedicated Web site that meets accessibility standards under section 508 of the Rehabilitation Act. (See *http://www.section508.gov* for additional information on these standards.)

Regulatory Flexibility Act Certification

The Secretary certifies that this final extension of project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entities that will be affected are the current grantee serving as the Professional Development Enhancement Center and any other potential applicants.

Paperwork Reduction Act of 1995

The final extension of project period and the waiver do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format

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Dated: August 9, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20605 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.326H]

National Early Childhood Technical Assistance Center; Final Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final extension of project period and waiver for the National Early Childhood Technical Assistance Center.

SUMMARY: The Secretary issues this notice to waive the requirements in the Education Department General Administrative Regulations (EDGAR) that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver enables the currently funded National Early Childhood Technical Assistance Center to receive funding from October 1, 2011 through September 30, 2012.

DATES: The extension of project period and waiver is effective August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Julia Martin Eile, U.S. Department of Education, 400 Maryland Avenue, SW., room 4056, Potomac Center Plaza (PCP), Washington, DC 20202–2550. *Telephone:* (202) 245–7431.

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

SUPPLEMENTARY INFORMATION: On June 7, 2011, the Department published a notice in the **Federal Register** (76 FR 32967) proposing an extension of project period and a waiver of 34 CFR 75.250 and 75.261(a) and (c) in order to—

(1) Enable the Secretary to provide additional funds to the currently funded National Early Childhood Technical Assistance Center (NECTAC) for an additional 12-month period, from October 1, 2011, through September 30, 2012; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

Public Comment

In response to our invitation in the notice of proposed extension of project period and waiver, we did not receive any substantive comments. Generally we do not address comments that do not express views on the substance of the notice of proposed extension of project period and waiver.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We received no substantive comments on the notice of proposed extension of project period and waiver, and we have not made any substantive changes to the proposal. The Secretary has therefore determined to waive the delayed effective date to ensure a timely continuation grant to the entity affected.

Background

On April 28, 2006, the Department published a notice in the **Federal Register** (71 FR 25163) inviting applications for new awards for fiscal year (FY) 2006 for NECTAC. The purpose of the NECTAC, which was funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1463, is to ensure that eligible infants, toddlers, and children with disabilities (ages birth through five years) receive, as appropriate, services under Parts B and C of IDEA that ultimately improve their developmental and early learning outcomes. Another purpose of the NECTAC is to ensure that the families of eligible infants, toddlers, and children receiving services under Part C of IDEA receive services necessary to enhance families' capacity to meet the developmental needs of their infants, toddlers, or children.

Based on the 2006 notice inviting applications, the Department made one award for a period of 60 months to the University of North Carolina at Chapel Hill to carry out the activities of the NECTAC.

Currently, the NECTAC focuses on providing technical assistance to strengthen State and local early childhood systems and improve outcomes for infants, toddlers, and children with disabilities and families of infants, toddlers, and children receiving services under Part C of IDEA.

The NECTAC's current project period is scheduled to end on September 30, 2011. We believe that it is not in the public interest to hold a new competition under this program in 2011 to fund a new NECTAC. An extension of the current grantee's project will align the end of the current NECTAC project period with the expiration of the project period for the Technical Assistance Center on Social-Emotional Intervention for Young Children (CFDA No. 84.326B) and allow for the Department to develop a strategic and better coordinated approach to early childhood special education technical assistance without there being a lapse in the provision of technical assistance services currently provided by the NECTAC. We also have concluded that it is not in the public

interest to have a lapse in the provision of the resources currently provided by the NECTAC.

For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years; waives the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds; and issues a continuation award under 34 CFR 75.253 in the amount of $3,000,000 to the University of North Carolina at Chapel Hill (H326H060005) to operate the NECTAC for an additional 12-month period.

Waiving these regulations and issuing this continuation award ensure that technical assistance is available to strengthen State and local early childhood systems and improve outcomes for infants, toddlers, and children with disabilities and families of infants, toddlers, and children receiving services under Part C of IDEA.

With this final extension of project period and waiver, the NECTAC will conduct the following activities during FY 2012:

(a) Develop products and services to respond to State needs prioritized on the basis of results of current needs-analyses and syntheses.

(b) Provide coordinated individualized and multi-State technical assistance services to address high-priority needs.

(c) Support State-specific technical assistance efforts specified by the Department's Office of Special Education Programs.

(d) Coordinate with other relevant national and State-level technical assistance efforts.

(e) Disseminate documents to a wide audience, including State and local directors of special education.

(f) Maintain the NECTAC's Web site.

Regulatory Flexibility Act Certification

The Secretary certifies that this final extension of project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entities that will be affected are the current grantee serving as the NECTAC and any other potential applicants.

Paperwork Reduction Act of 1995

The final extension of project period and the waiver do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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Dated: August 9, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20606 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.326T]

National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind; Final Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final extension of project period and waiver for the National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind.

SUMMARY: The Secretary issues this notice to waive the requirements in the Education Department General Administrative Regulations (EDGAR) that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver enables the currently funded National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind (Center) to receive funding from October 1, 2011, through September 30, 2013.

DATES: The extension of project period and waiver is effective August 12, 2011.

FOR FURTHER INFORMATION CONTACT: JoAnn McCann, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4076, Potomac Center Plaza (PCP), Washington, DC 20202–2550. *Telephone:* (202) 245–7434.

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

SUPPLEMENTARY INFORMATION: On June 7, 2011, the Department published a notice in the **Federal Register** (76 FR 32969) proposing an extension of project period and a waiver of 34 CFR 75.250 and 75.261(a) and (c) in order to—

(1) Enable the Secretary to provide additional funds to the currently funded Center for an additional 24-month period, from October 1, 2011, through September 30, 2013; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

Public Comment

In response to our invitation in the notice of proposed extension of project period and waiver, we did not receive any substantive comments. Generally, we do not address comments that do not express views on the substance of the notice of proposed extension of project period and waiver.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We received no substantive comments on the notice of proposed extension of project period and waiver, and we have not made any substantive changes to the proposal. The Secretary has therefore determined to waive the delayed effective date to ensure a timely continuation grant to the entity affected.

Background

On December 22, 2005, the Department published a notice in the **Federal Register** (70 FR 76039) inviting applications for new awards for fiscal year (FY) 2006 for a Center. The purpose of the Center, which was funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA), is to provide specialized technical assistance, training, dissemination, and informational services to States, families, and agencies and organizations that are responsible for the provision of early intervention, special education, and related and transitional services for children through age 21 who are deaf-blind. For purposes of this notice, the term ''individuals who are deaf-blind'' refers to infants, toddlers, children, youth and young adults through age 21 who are deaf-blind.

Based on the 2005 notice inviting applications, the Department made one award for a period of 60 months to Western Oregon University to establish the Center, which is currently known as the National Consortium on Deaf-Blindness (NCDB). The NCDB's major goals are three-fold. The first goal is to increase the capacity of State educational agencies (SEAs), local educational agencies (LEAs), early intervention programs, and other agencies to improve policies and practices that will result in appropriate assessment, planning, placement, and services for individuals who are deaf-blind. The second goal is to increase the capacity of State deaf-blind projects as well as State and local agencies to use evidence-based practices to improve outcomes for individuals who are deaf-blind. The third goal is to collaborate with Parent Training and Information Centers (PTIs) to build the capacity of families of individuals who are deaf-blind to build relationships with family, peers, service providers, employers, and others and develop their knowledge about and skills in self-advocacy and self-empowerment.

The NCDB accomplishes this mission through a combination of activities in the following areas: (1) Technical assistance to SEAs, LEAs, families, and organizations that are responsible for the provision of early intervention, special education, and related and transitional services for individuals who are deaf-blind; (2) collection and dissemination of information related to improving outcomes for individuals who are deaf-blind; and, (3) training to address gaps in the knowledge of service providers, including gaps in the knowledge of evidence-based practices, to improve outcomes for individuals who are deaf-blind.

The NCDB's current project period is scheduled to end on September 30, 2011. We believe that it is not in the public interest to hold a new competition in 2011 to fund a new Center. This extension will align the end of the NCDB's project period with the end of the grants funded under the Projects for Children and Young Adults who are Deaf-Blind program (CFDA Number 84.326C). This alignment will enable the Department to develop a technical assistance strategy for individuals who are deaf-blind that maximizes the effectiveness and efficiency of the services provided. We also have concluded that it is not in the public interest to have a lapse in the provision of technical assistance services currently provided by the NCDB pending the development of a coordinated strategy for technical assistance for individuals who are deaf-blind. For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years; and waives the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds; and issues a continuation award under 34 CFR 75.253 in the amount of $4,200,000 to Western Oregon University (H326T060002) to operate the Center for an additional 24-month period.

Waiving these regulations and issuing this continuation award ensure that technical assistance, training, and dissemination of information to multiple recipients, including families, individuals who are deaf-blind, State projects for deaf-blind services, SEAs, LEAs, lead agencies under Part C of IDEA, and other State agencies, will not be interrupted during this period of time.

With this extension of project period and waiver, the NCDB will be required to conduct the following activities:

(a) Continue identifying State project needs in order to provide universal, targeted, and intensive technical assistance and training, as appropriate.

(b) Assist State deaf-blind projects (1) to increase collaboration among State deaf-blind projects, the PTIs, and other OSEP Technical and Assistance projects (2) to improve early intervention, instructional and behavioral practices by providing universal, targeted, and intensive technical assistance and training, as appropriate.

(c) Provide information to SEAs to aid in policy development related to services to individuals who are deaf-blind, as appropriate.

(d) Assist families and individuals who are deaf-blind to increase their capacity to build relationships with family, peers, service providers, employers, and others; and develop their knowledge about and skills in self-advocacy and self-empowerment.

(e) Assist personnel preparation training programs to work collaboratively with each other to increase the number of teachers and paraprofessionals who are prepared to provide effective services and implement evidence-based practices to improve outcomes for individuals who are deaf-blind.

(f) Collaborate with the U.S. Department of Education's Office of Special Education and Rehabilitative Services, other Federal technical assistance projects, and State agencies to improve practices and services in early intervention, special education, related services, and transitional services by facilitating inclusion of individuals who are deaf-blind in SEA and LEA initiatives, as appropriate.

Regulatory Flexibility Act Certification

The Secretary certifies that the extension of project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entities that will be affected are the NCDB and any other potential applicants.

Paperwork Reduction Act of 1995

The final extension of project period and the waiver do not contain any information collection requirements.

Intergovernmental Review

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

This document provides early notification of our specific plans and actions for this program. *Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Dated: August 9, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–20607 Filed 8–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Site-Wide Environmental Impact Statement (EIS) Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, August 17, 2011, 2 p.m.

ADDRESSES: Nevada Site Office, 232 Energy Way, North Las Vegas, Nevada 89030.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax: (702) 295–5300 or e-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Committee: The purpose of the Committee is to review and prepare comments on the draft site-wide EIS.

Tentative Agenda: The Committee members will review and prepare comments on the draft site-wide EIS.

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following *Web site: http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC on August 9, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–20590 Filed 8–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–033]

Decision and Order Granting a Waiver to Fujitsu General Limited From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–033, which grants Fujitsu General Limited (Fujitsu) a waiver from the existing DOE test procedures applicable to commercial package air-source central air conditioners and heat pumps. The waiver is specific to the Fujitsu AIRSTAGE V–II Variable Refrigerant Flow (VRF) multi-split commercial heat pump models specified in Fujitsu's petition for waiver. As a condition of this waiver, Fujitsu must use the alternate test procedure set forth in this notice to test and rate these AIRSTAGE V–II VRF multi-split commercial heat pumps.

DATES: This Decision and Order is effective August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.govmailto:.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4), DOE provides notice of the issuance of the Decision and Order set forth below. In this Decision and Order, DOE grants Fujitsu a waiver from the existing DOE commercial package air conditioner and heat pump test procedures for the basic models of AIRSTAGE V–II multi-splits set forth in its petition. DOE also requires the use of an alternate test procedure for this equipment. Fujitsu must use American National Standards Institute/Air-Conditioning, Heating and Refrigeration Institute (ANSI/AHRI) Standard 1230–2010, ''Performance Rating of VRF Multi-Split Air-Conditioning and Heat Pump Equipment'' to test and rate the models of AIRSTAGE V–II VRF multi-split commercial heat pumps identified below. The cooling capacities of these models range from 72,000 Btu/h to 288,000 Btu/h.

Today's decision prohibits Fujitsu from making any representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and the

representations fairly disclose the test results. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. *Id.*

Issued in Washington, DC, on August 5, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Fujitsu General Limited (Fujitsu) (Case No. CAC–033).

Background

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6311–6317, as codified) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, which includes the AIRSTAGE V–II VRF commercial multi-split heat pumps (''AIRSTAGE V–II multi-split heat pumps'') that are the focus of this notice.[1] Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers. 42 U.S.C. 6316. With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. For commercial air-source heat pumps, DOE adopted ARI Standard 340/360–2004. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Fujitsu's AIRSTAGE V–II multi-split heat pumps in its waiver petition range from 72,000 Btu/h to 288,000 Btu/h. The current test procedure for this equipment is ARI Standard 340/360–2004, which includes units with capacities greater than 65,000 Btu/hour.

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On April 25, 2011, Fujitsu filed a petition for waiver from the test procedure at 10 CFR 431.96 applicable to commercial package air source central air conditioners and heat pumps, as well as an application for interim waiver. The capacities of the AIRSTAGE V–II multi-split heat pumps in Fujitsu's waiver petition range from 72,000 Btu/h to 288,000 Btu/h. The applicable test procedure for these commercial air-source heat pumps is ARI 340/360–2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

Fujitsu seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that the AIRSTAGE V–II multi-split heat pumps specified in its petition contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Fujitsu asserts that the two primary factors that prevent testing of these multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. *See, e.g.,* 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Fujitsu); 76 FR 19078 (April 6, 2011) (Mitsubishi).

On June 2, 2011, DOE published Fujitsu's petition for waiver in the **Federal Register**, seeking public comment pursuant to 10 CFR 431.401(b)(1)(iv), and granted the application for interim waiver. 76 FR 31946. DOE received no comments on the Fujitsu petition.

Assertions and Determinations

Fujitsu's Petition for Waiver

Fujitsu seeks a waiver from the DOE test procedures for the equipment specified in its petition on the grounds that its AIRSTAGE V–II VRF multi-split commercial heat pumps contain design characteristics that prevent them from being tested using the current DOE test

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

procedures. As stated above, Fujitsu asserts that the two primary factors that prevent testing these multi-split variable speed models are the same factors stated in the waivers that DOE granted to Mitsubishi, Daikin AC Americas (Daikin), Samsung Air Conditioning (Samsung), Carrier, Sanyo, and LG for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units to test.

The AIRSTAGE V–II system consists of multiple indoor units connected to one or multiple outdoor units. They have the capability of connecting the outdoor unit with up to 45 indoor units selected from 10 chassis types with 43 basic models, giving these systems more than a million installation combinations. Consequently, Fujitsu requested that DOE grant a waiver from the applicable test procedures for its AIRSTAGE V–II product designs.

In responses to two petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis upon which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI equipment, as well as for its R22 multi-split equipment. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. *See* 72 FR 17528 and 72 FR 17533. The Fujitsu AIRSTAGE V–II systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Daikin, Carrier, LG, and Sanyo. DOE granted waivers for these products, prescribing an alternate test procedure similar to the alternate test procedure prescribed for Mitsubishi. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

After DOE granted a waiver for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by the American National Standards Institute (AHRI)—''American National Standards Institute (ANSI)/AHRI 1230–2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment.'' This test procedure has been incorporated into ASHRAE 90.1–2010. DOE is currently assessing AHRI 1230–2010 with respect to the requirements for test procedures specified by EPCA (42 U.S.C. 6314(a)(4)(B)), and will provide a preliminary determination regarding those test procedures in a future notice of proposed rulemaking.

Fujitsu's petition proposed that DOE apply ANSI/AHRI Standard 1230–2010 as the alternate test procedure to apply to its AIRSTAGE V–II multi-split heat pump equipment as a condition of its requested waiver. As stated above, no comments were received by DOE regarding the Fujitsu petition. As described below, the alternate test procedure in the commercial multi-split waivers that DOE granted to Mitsubishi and the other manufacturers listed above is similar to ANSI/AHRI 1230–2010.

DOE issues today's Decision and Order granting Fujitsu a test procedure waiver for its commercial AIRSTAGE V–II multi-split heat pumps. As a condition of this waiver, Fujitsu must use ANSI/AHRI 1230–2010, the alternate test procedure specified by DOE, to test the Fujitsu AIRSTAGE V–II models listed in its petition.

Alternate Test Procedure

The alternate test procedure prescribed by DOE in earlier multi-split waivers, including the interim waiver granted to Fujitsu in response to the current petition, consisted of a definition of a ''tested combination'' and a prescription for representations. ANSI/AHRI 1230–2010 also includes a definition of ''tested combination,'' and the two definitions are identical in all relevant respects.

The earlier alternate test procedure provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit. ANSI/AHRI 1230–2010 requires an additional test and in this respect is similar to the residential test procedure set forth in 10 CFR part 430, subpart B, appendix M. Multi-split manufacturers must test two or more combinations of indoor units with each outdoor unit. The first system combination is tested using only non-ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all non-ducted indoor units is set equal to the rating of the tested system having all non-ducted indoor units. The second system combination is tested using only ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all ducted indoor units is set equal to the rating of the tested system having all ducted indoor units. The rating given to any untested multi-split system combination having the same outdoor unit and a mix of non-ducted and ducted indoor units is set equal to the average of the ratings for the two required tested combinations.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units that need to be tested, ANSI 1230–2010 requires that all the indoor units must be subjected the same minimum external static pressure so that the test lab can manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately and then sum the separate capacities to obtain the overall system capacity. Measuring capacity in this way would require that the test laboratory be equipped with multiple airflow measuring apparatuses. It is unlikely that any test laboratory would be equipped with the necessary number of such apparatuses. Alternatively, the test laboratory could connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit had been measured. However, that approach would be so time-consuming as to be impractical.

For the reasons discussed above, DOE believes Fujitsu's AIRSTAGE V–II multi-split heat pumps cannot be tested using the procedure prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2)-(3). After careful consideration, DOE has decided to prescribe ANSI/AHRI 1230–2010 as the alternate test procedure for Fujitsu's commercial multi-split products.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Fujitsu petition for waiver. The FTC staff did not have any objections to issuing a waiver to Fujitsu.

Conclusion

After careful consideration of all the materials submitted by Fujitsu, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver filed by Fujitsu (Case No. CAC–033) is hereby granted as set forth in the paragraphs below.

(2) Fujitsu shall not be required to test or rate its AIRSTAGE V–II multi-split heat pump models listed below on the basis of the test procedures cited in 10 CFR 431.96, specifically ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)). Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Outdoor units, 208/230Vac, 3-phase, 60Hz, Air-Source Heat pump models:

Standalone models:

AOUA72RLBV and AOUA96RLBV with nominal cooling capacities of 72,000 and 96,000 Btu/hr respectively.

Add-on system models	(Module models)
AOUA144RLBVG	(AOUA72RLBV + AOUA72RLBV)
AOUA168RLBVG	(AOUA72RLBV + AOUA96RLBV)
AOUA192RLBVG	(AOUA96RLBV + AOUA96RLBV)
AOUA216RLBVG	(AOUA72RLBV + AOUA72RLBV + AOUA72RLBV)
AOUA240RLBVG	(AOUA72RLBV + AOUA72RLBV + AOUA96RLBV)
AOUA288RLBVG	(AOUA96RLBV + AOUA96RLBV + AOUA96RLBV)

with nominal cooling capacities of 144,000, 168,000, 192,000, 216,000, 240,000 and 288,000 Btu/hr respectively.

Compatible indoor units for the above listed outdoor units:

Compact cassette: AUUA7RLAV, AUUA9RLAV, AUUA12RLAV, AUUA14RLAV, AUUA18RLAV and AUUA24RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000, 18,000 and 24,000 Btu/hr respectively.

Cassette: AUUB30RLAV and AUUB36RLAV with nominal cooling capacities of 30,000 and

36,000 Btu/hr respectively.

Slim cassette: AUUB18RLAV and AUUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

Compact wall mounted: ASUA7RLAV, ASUE7RLAV, ASUA9RLAV, ASUE9RLAV, ASUA12RLAV, ASUE12RLAV, ASUA14RLAV and ASUE14RLAV with nominal cooling capacities of 7,500, 7,500, 9,500, 9,500, 12,000, 12,000, 14,000 and 14,000 Btu/hr respectively.

Wall mounted: ASUB18RLAV and ASUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

Floor/Ceiling (Universal): ABUA12RLAV, ABUA14RLAV, ABUA18RLAV and ABUA24RLAV with nominal cooling capacities of 12,000, 14,000, 18,000, 24,000 Btu/hr respectively.

Ceiling: ABUA30RLAV and ABUA36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively.

Slim duct: ARUL7RLAV, ARUL9RLAV, ARUL12RLAV, ARUL14RLAV and ARUL18RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000 and 18,000 Btu/hr respectively.

Middle static pressure duct: ARUM24RLAV, ARUM30RLAV, ARUM36RLAV, ARUM48RLAV and ARUM54RLAV with nominal cooling capacities of 24,000, 30,000, 36,000, 48,000 and 54,000 Btu/hr respectively.

High static pressure duct: ARUH36RLAV, ARUH48RLAV, ARUH54RLAV, ARUH60RLAV, ARUH72RLAV, ARUH90RLAV and ARUH96RLAV with nominal cooling capacities of 36,000, 48,000, 60,000, 72,000, 90,000 and 96,000 Btu/hr respectively.

(3) *Alternate test procedure.* Fujitsu is not required to test the products listed in paragraph (2) above according to the test procedure for commercial package air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96 (ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but instead shall use the alternate test procedure ANSI/AHRI 1230–2010.

(4) This waiver shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(6) This waiver applies only to those basic models set out in Fujitsu's petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on August 5, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–20539 Filed 8–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW–019]

Decision and Order Granting a Waiver to Samsung From the Department of Energy Residential Clothes Washer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CW–019) that grants to Samsung Electronics America, Inc. (Samsung) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers for the basic models set forth in its petition for waiver. Under today's decision and order, Samsung shall be required to test and rate these clothes washers with larger clothes containers using an alternate test procedure that takes the larger capacities into account when measuring energy consumption.

DATES: This Decision and Order is effective August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611, *E-mail: Michael.Raymond@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796, *E-mail: Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Samsung a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J1 for certain basic models of clothes washers with capacities greater than 3.8 cubic feet, provided that Samsung tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Samsung from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC on August 5, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Samsung Electronics America, Inc. (Case No. CW–019).

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic and semi-automatic clothes washers is set forth in 10 CFR part 430, subpart B, appendix J1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On December 23, 2010, DOE issued enforcement guidance for large-capacity clothes washers. This guidance can be found on DOE's Web site at *http://www.gc.energy.gov/documents/LargeCapacityRCW_guidance_122210.pdf.*

II. Samsung's Petition for Waiver: Assertions and Determinations

On February 11, 2011, Samsung submitted the instant petition for waiver and application for interim waiver (petition) from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. This petition expands the model list set forth in Samsung's initial petition CW–014, for which DOE granted a waiver on March 10, 2011. 76 FR 13169. Samsung requested a waiver to test its residential clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet. Samsung's instant petition and DOE's grant of interim waiver were also published in the **Federal Register** on April 19, 2011. 76 FR 21881. DOE received no comments on the Samsung petition.

Samsung's petition seeks a waiver from the DOE test procedure because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. The basic models specified in Samsung's February 2011 petition have capacities larger than 3.8 cubic feet. In addition, if the current maximum test load mass is used to test these products, the tested energy use would be less than the actual energy usage, and could evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. Samsung requests that DOE grant a waiver for testing and rating based on a revised Table 5.1, the same table as set forth in the waiver granted to Samsung on March 10, 2011. The table is identical to the Table 5.1 found in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (September 21, 1010).

As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previously, DOE granted a test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

3.8 cubic feet. 75 FR 69653 (November 15, 2010). This notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 cubic feet. On December 10, 2010, DOE granted a similar waiver to General Electric Company (GE), which used the same alternate test procedure. 75 FR 76968. DOE has also granted waivers to Electrolux (76 FR 11440 (March 2, 2011)), LG (76 FR 11233 (March 1, 2011)) and Samsung (76 FR 13169 (March 10, 2011)). All decisions and orders for this type of product use the Table 5.1 values presented in DOE's NOPR.

DOE notes that its recently issued supplemental proposed rule (*http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/rcw_tp_snopr.pdf*) to amend the test procedures for clothes washers makes slight adjustments to Table 5.1 to correct for rounding errors. The alternate test procedure set forth in this decision and order adopts this updated table.

III. Consultations with Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Samsung petition for waiver. The FTC staff did not have any objections to granting a waiver to Samsung.

IV. Conclusion

After careful consideration of all the material that was submitted by Samsung, the waivers granted to Whirlpool, GE, LG and Electrolux, as well as previously to Samsung, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the Samsung Electronics America, Inc. (Case No. CW–019) is hereby granted as set forth in the paragraphs below.

(2) Samsung shall not be required to test or rate the following Samsung models on the basis of the current test procedure contained in 10 CFR part 430, subpart B, appendix J1. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below.

WA5471* * *, WA5461* * *, WA5451* * *, WA5441* * *, WA5431* * *.

(3) Samsung shall be required to test the products listed in paragraph (2) above according to the test procedures for clothes washers prescribed by DOE at 10 CFR part 430, appendix J1, except that, for the Samsung products listed in paragraph (2) only, the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.85	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.05	5.00

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.65	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

(4) Representations. Samsung may make representations about the energy use of its clothes washer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Samsung's petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC on August 5, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–20538 Filed 8–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–102–000.

Applicants: San Diego Gas & Electric Company.

Description: Application of San Diego Gas & Electric Company to Acquire Existing Generating Facility.

Filed Date: 08/05/2011.

Accession Number: 20110805–5080.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4237–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/5/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5043.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4238–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/5/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5048.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4239–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/5/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5049.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4240–000.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Company submits tariff filing per 35.13(a)(2)(iii: Metering Agent Agreement Between WPPI, L'Anse and UPPCO to be effective 10/1/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5051.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4241–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/5/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5052.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4242–000.

Applicants: Midwest Independent Transmission System Operator, Inc., ITC Midwest LLC.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Filing of Notice of Succession to be effective 10/5/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5053.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4243–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–08–05 CAISO Pilot Agreement with Bonneville Power to be effective 10/1/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5062.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4244–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: G619 Termination to be effective 10/5/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5071.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4245–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position O09; Original Service Agreement No. 2984 to be effective 7/6/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5101.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4246–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position T59; Original Service Agreement No. 2983 to be effective 7/6/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5103.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: ER11–4247–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position T54; Original Service Agreement No. 2982 to be effective 7/6/2011.

Filed Date: 08/05/2011.

Accession Number: 20110805–5113.

Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20550 Filed 8–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ11–14–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on July 7, 2011, Oncor Electric Delivery Company LLC submitted tariff filing per 35.25(e): baseline filing to be effective 7/6/2011, pursuant to Order 714.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email 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 29, 2011.

Dated: August 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20549 Filed 8–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–58–000]

Duke Energy Ohio, Inc.; Notice of Petition for Declaratory Order

Take notice that on August 5, 2011, Duke Energy Ohio, Inc. filed a Petition for Declaratory Order, requesting the Federal Energy Regulatory Commission (Commission) find that payment of dividends from equity accounts that represent adjusted retained earnings does not violate section 205(a) of the Federal Power Act.

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 September 6, 2011.

Dated: August 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20551 Filed 8–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–59–000]

Cedar Creek Wind, LLC; Notice of Petition for Enforcement

Take notice that on August 5, 2011, Cedar Creek Wind, LLC filed a Petition requesting the Federal Energy Regulatory Commission (Commission) institute an enforcement action against the Idaho Public Utility Commission (Idaho PUC) under section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA); to (1) Enforce the Commission's PURPA regulations, specifically section 292–304(d), and (2) overturn Idaho PUC's action in its June 8 Order and July 27 Order rejecting 5 Firm Energy Sales Agreements.[1]

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 26, 2011.

Dated: August 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–20552 Filed 8–11–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Idaho PUC Order No. 32260, Case No. PAC–E–11–01 *et al.,* at 9 (June 8, 2011) (June 8 Order); Idaho PUC Order No. 32302, Case No. PAC–E–11–01 *et al.,* at 7–11 (July 27, 2011) (July 27 Order).

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Site-Wide Environmental Impact Statement for Sandia National Laboratories, New Mexico (SNL/NM)

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Notice of Re-opening of Public Scoping period and Announcement of additional Public Scoping Meetings.

SUMMARY: On June 24, 2011, the National Nuclear Security Administration (NNSA), a semiautonomous agency within the U.S. Department of Energy (DOE), published a Notice of Intent (NOI) for the preparation of a Site-Wide Environmental Impact Statement (SWEIS) for the Sandia National Laboratories, New Mexico (DOE/EIS–0466). That notice stated that the public review and comment period would continue until 45 days after publication in the **Federal Register**, ending on August 8, 2011. In response to a request from the public, NNSA has decided to Re-open the public comment period through September 12, 2011, and to hold two additional public scoping meetings on Thursday September 1, 2011, in Albuquerque, NM.

DATES: The public comment period for the SNL/NM SWEIS is being re-opened through September 12, 2011. The schedule for the additional public scoping meetings on the SWEIS with all dates, times, and locations is the following:

- Thursday, September 1, 2011—1–4 p.m., Hilton Albuquerque Hotel, 1901 University Boulevard Northeast, Albuquerque, New Mexico.
- Thursday, September 1, 2011—6–9 p.m., Hilton Albuquerque Hotel, 1901 University Boulevard Northeast, Albuquerque, New Mexico.

ADDRESSES: The NOI and scoping meeting materials are available for review on the NNSA NEPA Web site at: *http://nnsa.energy.gov/nepa/sandiasweis.* The NOI may be obtained upon request by leaving a message on the Sandia Site Office (SSO) SWEIS Hotline at (toll free) 1–855–766–4651; or by writing to: U.S. Department of Energy, National Nuclear Security Administration, Sandia Site Office, P. O. Box 5400, Albuquerque, New Mexico 87185, Attn: Ms. Jeanette Norte, SNL/NM SWEIS Document Manager; or by facsimile ((505) 284–7197); or by e-mail at: *sandia.sweis@doeal.gov.*

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Ms. Mary Martin (NA–GC), NNSA NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or telephone 202–586–9438. For general information concerning the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–4600; leave a message at (800) 472–2756; or send an e-mail to *askNEPA@hq.energy.gov.* Additional information regarding DOE NEPA activities and access to many DOE NEPA documents are available on the Internet through the DOE NEPA Web site at *http://energy.gov/nepa.*

SUPPLEMENTARY INFORMATION: DOE's NEPA implementing regulations (10 CFR 1021.330) require DOE to prepare SWEISs for certain large, multiple-facility DOE sites; DOE is required to evaluate site wide NEPA documents prepared under § 1021.330(c) at least

every five years. In 1999 DOE/NNSA completed the first SNL/NM SWEIS which examined existing and potential impacts to the environment from ongoing and anticipated future DOE/NNSA operations conducted over approximately a 10-year period of time at SNL/NM and other DOE operations on and around Kirtland Air Force Base (KAFB). NNSA issued a Record of Decision (ROD) for the SWEIS in December 15, 1999 (64 FR 69996) announcing its decision to continue operations at SNL/NM under the expanded operations alternative. In August 2006, DOE/NNSA completed a 5-year review of the 1999 SNL/NM SWEIS with the preparation of a Supplement Analysis (SA) (DOE/EIS–0281–SA–04), to determine the adequacy of the existing EIS. Based on the 2006 *Final Supplement Analysis for the Site-Wide Environmental Impact Statement for Sandia National Laboratories, New Mexico* (DOE/EIS–0281–SA–04), DOE/NNSA determined that there were no substantial changes to the actions or impacts evaluated in the SNL/NM SWEIS, and there were no significant new circumstances or information relevant to environmental concerns; thus, the existing SNL/NM SWEIS was adequate and neither a supplemental EIS nor a new EIS was required.

The new SWEIS No Action Alternative will include the implementation of other decisions supported by separate NEPA analyses completed since the issuance of the Final 1999 SNL/NM SWEIS. This includes five Supplement Analyses resulting in the determination that further NEPA documentation was not required: (1) *Supplement Analysis for the Final Site-Wide Environmental Impact Statement for Sandia National Laboratories, New Mexico to Reestablishing Long-Term Pulse Mode Testing Capability at the Annular Core Research Reactor (ACRR), Sandia National Laboratories, New Mexico* (*ACRR Pulse Mode SA*) (DOE/EIS–0281–SA–01); (2) *Supplement Analysis for the Final Site-Wide Environmental Impact Statement for Sandia National Laboratories, New Mexico for Isentropic Compression and Flyer Plate Experiments Involving Plutonium at the Z and Saturn Accelerators* (*Pu-ICE SA*) (DOE/EIS–0281–SA–02); (3) *Supplement Analysis for the Final Site-Wide Environmental Impact Statement for Sandia National Laboratories, New Mexico for the Installation of a Petawatt Laser System in TA–IV* (*Petawatt Laser System SA*) (DOE/EIS–0281–SA–03); (4) *Sandia National Laboratories, New Mexico Final Supplement Analysis for the Site-Wide Environmental Impact Statement (2006 SNL/NM SWEIS SA)* (DOE/EIS–0281–SA–04); and (5) *Final Complex Transformation Supplemental Programmatic Environmental Impact Statement* (DOE/EIS–0235–S4) and its RODs (73 FR 77644 and 73 FR 77656). In addition the following seven environmental assessments and their associated Findings of No Significant Impacts will also be included in the No Action Alternative as well as actions categorically excluded from the need for preparation of either an EA or an EIS: (1) *Environmental Assessment for the Microsystems and Engineering Sciences Applications Complex,* DOE/EA–1335, September 2000; (2) *Final Environmental Assessment for the Test Capabilities Revitalization at Sandia National Laboratories, New Mexico,* DOE/EA–1446, January 2003; (3) *Final Environmental Assessment for the Center for Integrated Nanotechnologies at Sandia National Laboratories, New Mexico,* DOE/EA–1457, March 2003; (4) *Final Environmental Assessment for the Proposed Consolidation of Neutron Generator Tritium Target Loading Production,* DOE/EA–1532, June 2005; (5) *Final Environmental Assessment for the Expansion of Permitted Land and Operations at the 9940 Complex and Thunder Range at Sandia National Laboratories, New Mexico,* DOE/EA–1603, April 2008; (6) *Final Environmental Assessment for the Removal Actions at the technical Area III Classified Waste Landfill, Sandia National Laboratories, New Mexico,* DOE/EA–1729, August 2010; (7) *Final Environmental Assessment for Proposed Construction and Lease of New Facilities for the Department of Energy, National Nuclear Security Administration, Office of Secure Transportation (Albuquerque transportation and Technology Center) Albuquerque, New Mexico,* U. S. General Services Administration, July 2006. These various documents can be reviewed at the DOE/NNSA Public Reading Room at Government Information/Zimmerman Library, MSC05 3020, 1 University of New Mexico, Albuquerque, NM 87131–0001, Tel: 505/277–5441 Fax: 505/277–6019; E-mail: *govref@unm.edu;* Reading Room Web site: *http://elibrary.unm.edu/doe*; and on the Internet at: *http://nepa.energy.gov.*

On June 24, 2011, (76 FR 37100), NNSA published a NOI for the preparation of a SWEIS (DOE/EIS–0466) for the continued operation of DOE/NNSA activities at SNL/NM on KAFB and within the Albuquerque area, and other DOE activities at both on-site and off-site locations (i. e., the NNSA Service Center, the NNSA Office of Secure Transportation, NNSA Kirtland Operations, the NNSA Aviation Facility, and the DOE National Training Center). The NOI stated that the public scoping period would continue for 45 days after publication in the **Federal Register**, ending on August 8, 2011. NNSA has decided to re-open the public scoping period through September 12, 2011. NNSA has also decided to hold two additional public scoping meetings during the comment period. The newly added public scoping meetings will take place on Thursday September 1, 2011, in Albuquerque, NM. The complete schedule for the additional public scoping meetings on the SWEIS with all dates, times, and locations is the provided above, under **DATES**.

The SWEIS scoping meetings will use a format to facilitate dialogue between DOE/NNSA and the public and will provide individuals the opportunity to give written or oral statements. DOE/NNSA welcomes specific comments or suggestions on the SWEIS process. NNSA invites stakeholders and members of the public to submit comments on the scope of the SWEIS during the public scoping period, which started with the publication of the NOI in the **Federal Register** on June 24, 2011, and will now be continued through September 12, 2011. NNSA will consider comments received after this date to the extent practicable as it prepares the draft SWEIS. Questions or Comments concerning the scope of the SWEIS can be submitted to the NNSA SSO at the same postal and electronic addresses given above. Additionally, the SSO SWEIS Hotline provides instructions on how to record comments. Please mark all envelopes, faxes and e-mail: ''Scoping Comments SSO SNL/NM SWEIS''.

Issued in Washington, DC on August 9, 2011.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2011–20546 Filed 8–11–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8998–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202)

564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 08/01/2011 through 08/05/2011.

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110249, Draft Supplement, USFS, OR, Cobbler II Timber Sale and Fuels Reduction Project, Updated Information to Revise and Clarify Aspects of the Analyses Presented in the FEIS of October 2010, Proposing Vegetation and Fuels Management to Improve Health and Vigor Upland Forest Stands and Reduce Hazardous and Ladder Fuels, Walla Walla Ranger District, Umatilla National Forest, Wallowa and Union Counties, OR, Comment Period Ends: 09/26/2011, Contact: Betsy Kaiser 509–522–6290.

EIS No. 20110250, Draft EIS, NRC, NH, Generic—License Renewal of Nuclear Plants Regarding Seabrook Station, Supplemental 46, City of Seabrook, Rockingham County, NH, Comment Period Ends: 10/26/2011, Contact: Michael Wentzel 301–415–6459.

EIS No. 20110251, Final EIS, USFS, WI, Phelps Vegetation and Transportation Management Project, Proposal to Implement Vegetation and Transportation Management Activities, Eagle River-Florence Ranger District, Vilas County, WI, Review Period Ends: 09/12/2011, Contact: Christine Brenner 715–479–2827 Ext. 21.

EIS No. 20110252, Final EIS, BLM, WY, Buckskin Mine Hay Creek II Project, Coal Lease Application WYW–172684, Wyoming Powder River Basin, Campbell County, WY, Review Period Ends: 09/12/2011, Contact: Teresa Johnson 307–261–7600.

EIS No. 20110253, Final Supplement, MMS, 00, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2011 Western Planning Area Sales 218, TX, Review Period Ends: 09/12/2011, Contact: Gary Goeke 504–736–3233.

EIS No. 20110254, Final EIS, FWS, WA, Willapa National Wildlife Refuge Draft Comprehensive Conservation Plan, Implementation, Pacific County, WA, Review Period Ends: 09/12/2011, Contact: Charles Houghten 503–231–6207.

EIS No. 20110255, Draft EIS, USFS, SD, Streamboat Project, Proposes to Implement Multiple Resource Management Actions, Northern Hills Ranger District, Black Hills National Forest, Lawrence, Meade and Pennington Counties, SD, Comment Period Ends: 09/26/2011, Contact: Rhonda O'Byrne 605–642–4622.

EIS No. 20110256, Draft EIS, FRA, CA, California High-Speed Train (HST): Fresno to Bakersfield Section High-Speed Train, Proposes to Construct, Operate, and Maintain an Electric-Powered High-Speed Train (HST), Fresno, Kings, Tulare and Kern Counties, CA, Comment Period Ends: 09/28/2011, Contact: David Valenstein 202–493–6368.

EIS No. 20110257, Draft EIS, FRA, CA, California High-Speed Train (HST): Merced to Fresno Section High-Speed Train, Proposes to Construct, Operate, and Maintain an Electric-Powered High-Speed Train (HST), Merced, Madera and Fresno Counties, CA, Comment Period Ends: 09/28/2011, Contact: David Valenstein 202–493–6868.

EIS No. 20110258, Final EIS, DOE, CA, Topaz Solar Farm Project, Issuing a Loan Guarantee to Royal Bank of Scotland for Construction and Startup, San Luis Obispo County, CA, Review Period Ends: 09/12/2011, Contact: Angela F. Colamaria 202–287–5387.

Amended Notices

EIS No. 20110190, Draft EIS, FRA, MS, Tupelo Railroad Relocation Planning and Environmental Study, To Improve Mobility and Safety by Reducing Roadway Congestion, City of Tupelo, MS, Comment Period Ends: 08/08/2011, Contact: John Winkle 202–493–6067. Revision to FR Notice Published 06/24/2011: Extending Comment Period from 08/08/2011 to 09/12/2011.

Dated: August 9, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–20599 Filed 8–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8998–5]

Mandan, Hidatsa and Arikara (MHA) Nation's Refinery, Notice of Availability of the Record of Decision (ROD), National Pollutant Discharge Elimination System (NPDES) Permit

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The MHA Nation proposes to construct, own and operate a 13,000 barrels-per-day petroleum refinery on the Fort Berthold Indian Reservation near Makoti in North Dakota. The refinery will produce diesel fuel, gasoline and propane. The NPDES permit will be for surface water discharges associated with the operation of the refinery.

EPA's decision to issue the NPDES permit is based on the Environmental Impact Statement (EIS), the Fact Sheet for the NPDES permit and the administrative record for the project. EPA and the Bureau of Indian Affairs issued the draft EIS in June 2006 and the final EIS (FEIS) in August 2009. Since the FEIS was issued, the MHA Nation decided to change the refinery feedstock from synthetic crude oil to the Bakken formation crude. As a result of the feedstock change, EPA evaluated the potential changes in impacts and the analysis in the FEIS. EPA's evaluation is summarized in a Supplemental Information Report (SIR). The FEIS, ROD and SIR are available for review at *http://www.epa.gov/region8/compliance/nepa/mharefinery.html.* The appeal period for the NPDES permit decision ends 30 days from the date of this notice in accordance with 40 CFR 124.19.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Allen; *Allen.dana@epa.gov*, (303) 312–6870 regarding the ROD and SIR and Mr. Robert Brobst; *Brobst.bob@epa.gov*, (303) 312–6129 regarding the NPDES permit; U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street; Denver, Colorado, 80202–1129.

Dated: August 9, 2011.

Susan E. Bromm,

Director, Office of Federal Activities.

[FR Doc. 2011–20601 Filed 8–11–11; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 11, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1070.

Title: Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local, or Tribal Government.

Number of Respondents: 103 respondents; 103 responses.

Estimated Time per Response: 0.5 to 4.5 hours.

Frequency of Response: On occasion reporting requirement, 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. 151, 154(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,500 hours.

Total Annual Cost: $810,000.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission is seeking an extension of this information collection in order to obtain the full three year approval from OMB. There are no changes in any of the reporting, recordkeeping, and third party disclosure requirements. The recordkeeping, reporting, and third party disclosure requirements will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–20568 Filed 8–11–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: August 8, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10386	Bank of Shorewood	Shorewood	IL	8/5/2011
10387	Bank of Whitman	Colfax	WA	8/5/2011

[FR Doc. 2011–20509 Filed 8–11–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: August 17, 2011—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Part of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

Matters To Be Considered

Open

1. Staffing Briefing and Discussion of Draft Proposed Rule on Passenger Vessel Financial Responsibility Requirements.

Closed

1. Staff Briefing and Recommendation Regarding Special Reporting Requirements for the Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement.
2. Staff Update and Discussion of PierPass Traffic Mitigation Fee.
3. Container Freight Index and Derivatives Working Group—Update on Index-Based Service Contract Filings and Regulatory Issues.
4. Staff Briefing and Discussion of the Reconstruction Proceedings and Chapter 15 Bankruptcy Petition of the Containership Company A/S.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–20648 Filed 8–10–11; 11:15 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have 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
003704F	American One Freight Forwarders Inc., 3515 NW. 114th Avenue, Doral, FL 33178	June 23, 2011.
017807N	Spartan Shipping, Inc., 9990 NW. 14th Street, Unit 104, Miami, FL 33172	June 23, 2011.
019835N	AM Worldwide, Inc., 2928 B Greens Road, Suite 450, Houston, TX 77032	June 3, 2011.
022605N	AK Solutions Inc., 10034 Halston Drive, Sugarland, TX 77498	June 2, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–20493 Filed 8–11–11; 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: 002364F.
Name: Reiko Soejima Gibbs and James Thomas Gibbs dba Excel International Forwarders.
Address: 800 E. Wardlow Road, Long Beach, CA 90807.
Date Revoked: July 17, 2011.
Reason: Failed to maintain a valid bond.

License Number: 2906F.
Name: Bill Fitch International, Inc.
Address: 21 Piney Point Road, Savannah, GA 31410.
Date Revoked: July 5, 2011.
Reason: Voluntarily surrendered license.

License Number: 003095F.
Name: Flamingo International, Inc.
Address: 7185 NW. 87th Avenue, Miami, FL 33178.
Date Revoked: July 1, 2011.
Reason: Failed to maintain a valid bond.

License Number: 004084N.
Name: Glory Express, Inc.
Address: 21900 S. Alameda Street, Long Beach, CA 90810.
Date Revoked: July 20, 2011.
Reason: Failed to maintain a valid bond.

License Number: 004140NF.
Name: Pacific Wells Corp. dba Pelican Shipping Line.
Address: 615 East Alondra Boulevard, Compton, CA 90220.
Date Revoked: July 20, 2011.
Reason: Failed to maintain valid bonds.

License Number: 004546F.
Name: Foreign Freight Systems Corp.
Address: 10250 NW. 89th Avenue, Bay 10, Medley, FL 33178.
Date Revoked: July 19, 2011.
Reason: Voluntarily surrendered license.

License Number: 004609N.
Name: Export Container Lines, Inc.
Address: 283 6th Street, Avalon, NJ 08202.
Date Revoked: July 25, 2011.
Reason: Failed to maintain a valid bond.

License Number: 8338N.
Name: Transway Freight Systems, Inc. dba Powertrans Freight Systems.
Address: 145–30 156th Street, Jamaica, NY 11434.
Date Revoked: July 27, 2011.
Reason: Failed to maintain a valid bond.

License Number: 016190N.
Name: Neptune International Group, Inc. dba Yunhoo Company.
Address: 398 South Lemon Creek Drive, Suite R, Walnut, CA 91789.
Date Revoked: July 8, 2011.
Reason: Failed to maintain a valid bond.

License Number: 016376F.
Name: Combined Forwarding, Inc.
Address: 14700 Highland Springs Court, Davie, FL 33323.
Date Revoked: July 20, 2011.
Reason: Voluntarily surrendered license.

License Number: 017937N.
Name: L.C. Logistics, Inc.
Address: 2075 S. Atlantic Boulevard, Suite H, Monterey Park, CA 91754.
Date Revoked: July 20, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018111NF.
Name: Dragon America Logistics, Inc.
Address: 3133 NW Chapin Drive, Portland, OR 97229

Date Revoked: July 29, 2011.
Reason: Failed to maintain valid bonds.
License Number: 018317N.
Name: Bahaghari LLC dba Bahaghari LLC dba DL Lawin Cargo dba Bahaghari Express Cargo.
Address: 761 Highland Place, San Dimas, CA 91773.
Date Revoked: June 20, 2011.
Reason: Voluntarily surrendered license.
License Number: 018392N.
Name: Broom U.S.A., Inc. dba B.G. Logistics.
Address: 7836 NW. 46th Street, Doral, FL 33166.
Date Revoked: July 15, 2011.
Reason: Failed to maintain a valid bond.
License Number: 018854NF.
Name: United Logistics, Inc.
Address: 369 Van Ness Way, Suite 710, Torrance, CA 90501.
Date Revoked: July 31, 2011.
Reason: Failed to maintain valid bonds.
License Number: 019261N.
Name: N.C. Shipping, Inc.
Address: 7771 Garvey Avenue, Suite D, Rosemead, CA 91770.
Date Revoked: July 1, 2011.
Reason: Failed to maintain a valid bond.
License Number: 019271F.
Name: Xima Freight Services, Inc.
Address: 1525 NW. 82nd Avenue, Miami, FL 33126.
Date Revoked: July 3, 2011.
Reason: Failed to maintain a valid bond.
License Number: 019630N.
Name: Pioneer Shipping Logistics Inc.
Address: 99–32 66th Road, Suite 7X, Rego Park, NY 11374.
Date Revoked: June 25, 2011.
Reason: Voluntarily surrendered license.
License Number: 019790N.
Name: K. C. Consulting, Inc.
Address: 36565 Nathan Hale Drive, Lake Villa, IL 60046.
Date Revoked: October 13, 2010.
Reason: Failed to maintain a valid bond.
License Number: 020218N.
Name: Fortune Logistics (USA) Inc.
Address: 3309 Brookridge Road, Duarte, CA 91010.
Date Revoked: July 28, 2011.
Reason: Failed to maintain a valid bond.
License Number: 020385F.
Name: Worldpack, LLC.
Address: 200 First Avenue West, Suite 400, Seattle, WA 98119.
Date Revoked: July 12, 2011.
Reason: Failed to maintain a valid bond.
License Number: 020530N.
Name: La Solucion Cargo Express Corp.
Address: 3900 SW. 52nd Avenue, Suite 401, Hollywood, FL 33023.
Date Revoked: July 9, 2011.
Reason: Failed to maintain a valid bond.
License Number: 020696N.
Name: ACS Logistics, Inc.
Address: 5005 W. Royal Lane, Suite 198, Irving, TX 75063.
Date Revoked: July 11, 2011.
Reason: Voluntarily surrendered license.
License Number: 020700F.
Name: Allen & Sally Associates, LLC dba USA Customs Brokers & Freight Forwarders.
Address: 7094 Peachtree Industrial Boulevard, Suite 270–1, Norcross, GA 30071.
Date Revoked: July 3, 2011.
Reason: Failed to maintain a valid bond.
License Number: 020732N.
Name: PNBRCI Holding Co., Ltd. dba PNB Cargo Services.
Address: 3345 Wilshire Boulevard, Suite 230, Los Angeles, CA 90010.
Date Revoked: July 20, 2011.
Reason: Failed to maintain a valid bond.
License Number: 020761N.
Name: Royaline Shipping, Inc.
Address: 646 Fairview Avenue, Suite 20, Arcadia, CA 91007.
Date Revoked: December 4, 2009.
Reason: Failed to maintain a valid bond.
License Number: 020873N.
Name: New Victory International Logistics, Inc.
Address: 6560 Bandini Blvd., Commerce, CA 90040.
Date Revoked: July 27, 2011.
Reason: Failed to maintain a valid bond.
License Number: 021405F.
Name: JBL Services, Inc.
Address: 625 Gatewood, Garland, TX 75043.
Date Revoked: July 6, 2011.
Reason: Failed to maintain a valid bond.
License Number: 021608F.
Name: United Trading & Shipping Company.
Address: 2724 Dorr Avenue, Suite 100, Fairfax, VA 22031.
Date Revoked: June 6, 2011.
Reason: Voluntarily surrendered license.
License Number: 021616N.
Name: Scrap-N-Ship Logistics Corp.
Address: 810 SW. 173rd Avenue, Pembroke Pines, FL 33029.
Date Revoked: July 14, 2011.
Reason: Failed to maintain a valid bond.
License Number: 021705NF.
Name: Horizon Logistics, LLC dba HRZ Logistics, LLC dba HRZ Logistics.
Address: 600 E. Las Colinas Boulevard, Suite 550, Irving, TX 75039.
Date Revoked: June 20, 2011.
Reason: Voluntarily surrendered license.
License Number: 022554F.
Name: Saheed Olalekan Bello dba Sahbell International Services.
Address: 11950 FM 1960 West, Suite 1123, Houston, TX 77065.
Date Revoked: July 13, 2011.
Reason: Failed to maintain a valid bond.
License Number: 022653N.
Name: Flash Forward Logistics Inc.
Address: 17 Sunset Avenue, Lynbrook, NY 11563
Date Revoked: June 6, 2011.
Reason: Voluntarily surrendered license.
License Number: 023013N.
Name: Skybox Cargo Consolidators, LLC.
Address: 2328 E. Van Buren Street, Suite 129, Phoenix, AZ 85006.
Date Revoked: July 14, 2011.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–20494 Filed 8–11–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following licenses are being rescinded 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 Number: 015605N.
Name: Solid Trans Inc.
Address: 1401 S. Santa Fe Avenue, Compton, CA 90221.
Order Published: FR: 7/25/11 (Volume 76, No. 142, Pg. 44331–44332).
License Number: 019364NF.
Name: New Life Health Care Services, LLC dba New Life Marine Services.
Address: 3527 Brackenfern Road, Katy, TX 77449.
Order Published: FR: 7/25/11 (Volume 76, No. 142, Pg. 44331–44332).
License Number: 020297N.
Name: Lorimer Cargo Express, Inc.
Address: 6546 Pembroke Road, Miramar, FL 33023.

Order Published: FR: 7/25/11 (Volume 76, No. 142, Pg. 44331–44332).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–20492 Filed 8–11–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through November 30, 2014, the current PRA clearance for information collection requirements contained in the FTC rule on ''Labeling and Advertising of Home Insulation'' (R-value Rule or Rule). That clearance expires on November 30, 2011.

DATES: Comments must be filed by October 11, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''R-value Rule: FTC File No. R811001'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/rvaluerulepra,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). Because the number of entities affected by the Commission's requests will exceed ten, the Commission plans to seek OMB clearance under the PRA. As required by § 3506(c)(2)(A) of the PRA, the Commission is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements associated with the Commission's R-value Rule, 16 CFR part 460 (OMB Control Number 3084–0109).

The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Request for Comments

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before October 11, 2011.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 11, 2011. Write ''R-value Rule: FTC File No. R811001'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/valuerulepra,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''R-value Rule: FTC File No. R811001'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 11, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

R-value Rule Burden Statement

Estimated annual hours burden: 125,828 hours.

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotional materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,615 installers who sell home insulation; (3) 125,000 new home builders/sellers of site-built homes and approximately 5,500 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. Based on past industry input, staff estimates that the test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. Their total annual testing burden is therefore approximately 30 hours.

Staff further estimates that most manufacturers require an average of approximately 20 hours per year regarding third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers × 20 hours) + (6 manufacturers × 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 2,000,000 retrofit insulations (an industry source's estimate) are installed by approximately 1,615 installers per year, and, thus, the related annual burden total is approximately 66,667 hours (2,000,000 sales transactions × 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,615 hours per year. In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per year per installer—for a total of approximately 134 hours.

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than 30 seconds per sales transaction is required to comply with this requirement, for a total annual burden of approximately 4,872 hours (an estimated 586,900 new home sales[2] × 30 seconds). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Staff believes that the 30 seconds covering disclosures would also encompass this recordkeeping element.

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is de minimis. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 116,790 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 134 recordkeeping and 68,282 disclosure hours for installers; 4,872 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. The estimated total burden is approximately 125,828 burden hours.

Estimated annual cost burden: $2,548,200 (solely related to labor costs).

The total annual labor cost for the Rule's information collection requirements is $2,883,088, derived as follows: Approximately $800 for testing, based on 30 hours for manufacturers (30 hours × $26 per hour for skilled technical personnel); $4,000 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 284 hours (284 hours × $14 per hour for clerical personnel); $47,000 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $14 per hour for clerical personnel); and $2,500,000 for disclosure compliance by installers, new home sellers, and retailers (123,262 hours × $20 per hour for sales persons).[3]

[2] Based on U.S. census data for 2010. See *http://www.census.gov/const/startsan.pdf.*

[3] The wage rates for engineering technicians, except drafters (skilled technical personnel), file clerks (clerical personnel), and sales and related occupations (sales persons) are based on recent data from the Bureau of Labor Statistics National Compensation Survey.

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

Willard K. Tom,

General Counsel.

[FR Doc. 2011–20372 Filed 8–11–11; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Availability of Draft ICCVAM Recommendations on Using Fewer Animals to Identify Chemical Eye Hazards: Revised Criteria Necessary to Maintain Equivalent Hazard Classification; Request for Comments

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health, HHS.

ACTION: Availability of Recommendations; Request for Comments.

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), conducted an analysis to determine classification criteria using results from 3-animal tests that would provide eye hazard classification equivalent to testing conducted in accordance with current U.S. Federal Hazardous Substances Act (FHSA) regulations, which require the use of 6 to 18 animals. The results showed that using a classification criterion of at least 1 positive animal in a 3-animal test to identify eye hazards will provide the same or greater level of eye hazard classification as current FHSA requirements, while using 50% to 83% fewer animals. ICCVAM developed draft recommendations based on the results of this analysis. NICEATM invites public comments on these draft ICCVAM recommendations.

DATES: Written comments on the draft recommendations should be received by September 26, 2011.

ADDRESSES: NICEATM prefers that comments be submitted electronically via the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm*) or via e-mail to *niceatm@niehs.nih.gov.* Written comments may also be sent by mail or fax to Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709; (fax) 919–541–0947. Courier address: NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes: (telephone) 919–541–2384, (fax) 919–541–0947, or (e-mail) *niceatm@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

Testing requirements necessary to determine the eye hazard potential for substances regulated under the FHSA (FHSA, 2008) are provided in 16 CFR 1500.42 (U.S. Consumer Product Safety Commission [CPSC], 2010). Current FHSA regulations provide procedures to determine the eye hazard classification and labeling requirements for chemicals and products to which consumers may be exposed. The current procedure requires a minimum of 6 animals per test and may require up to 3 sequential tests for each substance, thus requiring 6, 12, or 18 animals to reach a hazard classification decision. The requirement for second and third sequential tests is based on the number of positive responses in the previous test.

In 2002, the Organisation for Economic Co-operation and Development (OECD) Test Guidelines Program adopted U.S. proposed revisions to Test Guideline 405: Acute Eye Irritation/Corrosion (OECD, 2002) that reduce the maximum number of required animals per test from 6 to 3. The Animal Welfare Act (7 U.S.C. 2131 *et seq*) and the Public Health Service (PHS) Policy (PHS, 2002) similarly require that only the minimum number of animals necessary to obtain scientifically valid results should be used and that a rationale for the appropriateness of the number of animals used be provided to and approved by the Institutional Animal Care and Use Committee. In light of this policy and regulations, most *in vivo* ocular safety testing is expected to adhere to the 3-animal procedure described in OECD Test Guideline 405 (OECD, 2002) and in a test guideline issued by the U.S. Environmental Protection Agency (EPA, 1998). However, current FHSA regulations do not provide criteria to classify results from a 3-animal test. Therefore, an analysis was conducted to determine classification criteria based on results from a 3-animal test that would provide eye hazard classification equivalent to procedures in current FHSA regulations (Haseman *et al.,* 2011). The results showed that using a classification criterion of at least 1 positive in a 3-animal test to identify eye hazards will provide the same or greater level of eye hazard classification as current FHSA requirements, while using 50% to 83% fewer animals. Based on these results, ICCVAM developed draft recommendations to use this classification criterion for ocular safety testing procedures that use only a maximum of 3 animals per test substance.

Availability of the Documents

The draft ICCVAM recommendations and the supporting publication describing the results of the analysis are available on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/methods/ocutox/reducenum.htm*), and may also be obtained by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT**).

Request for Public Comments

NICEATM invites the submission of written comments on the draft ICCVAM recommendations and the extent to which the NICEATM analysis supports the recommendations by September 26, 2011. When submitting written comments, please refer to this **Federal Register** notice and include appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if applicable). NICEATM will post all comments on the NICEATM–ICCVAM Web site (*http://ntp-apps.niehs.nih.gov/iccvampb/searchPubCom.cfm*) identified by the individual's name and affiliation or sponsoring organization (if applicable). ICCVAM will consider all public comments and comments made by the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) at the June 17–18, 2010 meeting (75 FR 26757) when finalizing its recommendations. Final ICCVAM recommendations will be forwarded to relevant Federal agencies for their consideration. These recommendations will also be available to the public on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/methods/ocutox/reducenum.htm*).

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM and ICCVAM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

SACATM was established in response to the ICCVAM Authorization Act [Section 285*l*–3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

References

AWA. 2010. Animal Welfare Act. 7 U.S.C. 2131 *et seq.* Public Law 89–544. Available: *http://www.aphis.usda.gov/animal_welfare/downloads/awa/awa.pdf.*

CPSC. 2010. Hazardous Substances and Articles; Administration and Enforcement Regulations. 16 CFR part 1500. Available: *http://www.gpo.gov/fdsys/pkg/CFR-2010-title16-vol2/xml/CFR-2010-title16-vol2-part1500.xml.*

EPA. 1998. Health Effects Test Guideline, OPPTS 870.2400 Acute Eye Irritation. Washington, DC: U.S. Environmental Protection Agency. Available: *http://iccvam.niehs.nih.gov/SuppDocs/FedDocs/EPA/EPA_870_2400.pdf.*

FHSA. 2008. 15 U.S.C. 1261–1278. Public Law 86–613. Available: *http://www.cpsc.gov/businfo/fhsa.pdf.*

Haseman JK, Allen DG, Lipscomb EA, Truax JF, Stokes WS. 2011. Using fewer animals to identify chemical eye hazards: Revised criteria necessary to maintain equivalent hazard classification [published online ahead of print]. Regul Toxicol Pharmacol. Available: *http://dx.doi.org/10.1016/j.yrtph.2011.06.006.*

OECD. 2002. Test No. 405: Acute Eye Irritation/Corrosion. In: OECD Guidelines for the Testing of Chemicals, Section 4: Health Effects. Paris:OECD Publishing. Available: *http://www.oecd-ilibrary.org/content/book/9789264070646-en.*

PHS. 2002. Public Health Service Policy on Humane Care and Use of Laboratory Animals. Bethesda, MD: Office of Laboratory Animal Welfare, National Institutes of Health. Available: *http://grants.nih.gov/grants/olaw/references/phspol.htm.*

Dated: August 3, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–20537 Filed 8–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

International Workshop on Alternative Methods for Human and Veterinary Rabies Vaccine Testing: State of the Science and Planning the Way Forward

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Announcement of a Workshop; Call for Abstract Submissions.

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces an ''International Workshop on Alternative Methods for Human and Veterinary Rabies Vaccine Testing: State of the Science and Planning The Way Forward.'' This workshop will bring together scientists from government, industry, and academia to review the current state of the science and validation status of methods and approaches that may reduce, refine, or replace animal use in human and veterinary rabies vaccine potency testing, and to develop an implementation strategy to achieve global acceptance and use of these alternatives. Attendance is open to the public at no charge and limited only by the available space. Abstracts for scientific posters for display at the workshop are also invited (see **SUPPLEMENTARY INFORMATION**).

DATES: The workshop is scheduled for October 11–13, 2011. Sessions will begin at 8:30 a.m. each day and end at approximately 6 p.m. on October 11 and 12 and at 12 p.m. on October 13. The deadline for registration is September 30, 2011. Due to U.S. Department of Agriculture (USDA) security requirements, onsite registration at the workshop will not be available. The deadline for submission of poster abstracts is September 16, 2011.

ADDRESSES: The workshop will be held at the Center for Veterinary Biologics at the USDA National Centers for Animal Health, 1920 Dayton Avenue, Ames, Iowa 50010. Individuals with disabilities who need accommodation to participate in this event should contact Ms. Debbie McCarley at voice telephone: 919–541–2384 or e-mail: *mccarley@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least 5 business days in advance of the event.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.* Courier address: NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

Rabies is one of the oldest known zoonotic diseases and is responsible for at least 55,000 human deaths worldwide each year (World Health Organization [WHO], 2010). Rabies vaccines serve a vital role in preventing further deaths and controlling the disease in certain animal populations. An estimated 15 million people receive post-exposure vaccine prophylaxis each year due to actual or suspected exposures to the rabies virus. In the United States and other developed countries, rabies vaccines have effectively eliminated domestic rabies virus strains. Prior to the release of each production lot of vaccine, regulatory authorities require demonstration of potency and safety. Potency and safety testing of rabies vaccines requires large numbers of laboratory animals and involves significant pain and distress. New

methods and approaches are sought that (1) are more humane and use fewer or no animals; (2) are faster, less expensive, and more accurate; and (3) are safer for laboratory workers.

A recent international workshop organized by NICEATM, the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), and its international partners identified rabies vaccines as one of the three highest priorities for future research, development, and validation of alternative test methods that could further reduce, refine, and ultimately replace animal use for potency and safety testing. Organizing an international workshop to assess the current state of the science and way forward for alternative methods for rabies vaccine potency testing was identified as a high priority. Based on recent scientific and technological advances, several alternative approaches to rabies vaccine potency testing have been proposed or are currently available. This international workshop will bring together scientific experts from government, industry, and academia to review these methods and to define efforts necessary to achieve global acceptance and implementation. The workshop is organized by NICEATM, ICCVAM, the European Centre for the Validation of Alternative Methods (ECVAM), the Japanese Center for the Validation of Alternative Methods (JaCVAM), and Health Canada.

Preliminary Workshop Agenda

Day 1 Tuesday, October 11, 2011

- Welcome and Overview of Workshop Goals and Objectives
- Rabies Vaccines for Humans and Animals: Public Health Perspectives
- Current Requirements and Guidance on Product-Specific Validation of Alternatives for Veterinary Rabies Vaccine Potency Testing
- Current Requirements and Guidance on Product-Specific Validation of Alternatives for Human Rabies Vaccine Potency Testing
- International Guidelines for Rabies Vaccine Potency Testing
  - WHO
  - World Organisation for Animal Health (OIE)
- Incorporating Reduction, Refinement, and Replacement (the ''3Rs'') Into Human and Veterinary Rabies Vaccine Potency Testing: An Industry Perspective
- Critical Analysis of the *In Vivo* Potency Challenge Test for Inactivated Rabies Vaccines
- Serological Methods for Human and Veterinary Rabies Vaccine Potency Testing: Overview and Validation Status
- *In Vitro* Antigen Quantification Assays for Rabies Vaccine Potency Testing
- Application of Consistency Parameters and Integrated Approaches to Reduce and Replace Animal Use for Rabies Vaccine Potency Testing
- Vaccine Adjuvants and their Impact on Antigen Quantification Methods
- Current NIH Research on Improved Rabies Vaccines

Day 2 Wednesday, October 12, 2011

- Breakout Session #1: Serologic Methods for Rabies Vaccine Potency Testing
- Breakout Session #2: Non-Animal Approaches to Rabies Vaccine Potency Testing: Antigen Quantification and Integrated Approaches

Day 3 Thursday, October 13, 2011

- Breakout Session #2 (continued): Non-Animal Approaches to Rabies Vaccine Potency Testing: Antigen Quantification and Integrated Approaches
- Breakout Session #3: The *In Vivo* Potency Challenge Test for Inactivated Rabies Vaccines: Refinement and Reduction Opportunities
- Closing Session: Review of Workshop Conclusions and Recommendations

Registration

Registration information, tentative agenda, and additional meeting information are available on the workshop Web site (*http://iccvam.niehs.nih.gov/meetings/RabiesVaccWksp-2011/RabiesVaccWksp.htm*) and upon request from NICEATM (see **FOR FURTHER INFORMATION CONTACT**).

Call for Abstracts

NICEATM and ICCVAM invite the submission of abstracts for scientific posters to be displayed during this workshop. Posters should address current research, development, validation, and/or regulatory acceptance of alternative methods that may reduce, refine, and/or replace the use of animals for human or veterinary rabies vaccine potency testing. The body of the abstract is not to exceed 400 words. Key references relevant to the abstract may be included after the abstract body; however, the length of the abstract and references should not exceed one page. All submissions should be at least 12-point font and all margins for the document should be no less than one inch. Title information should include the names of all authors and associated institutions. The name, address, phone number, fax number, and email address for the corresponding or senior author should be provided at the end of the abstract.

Abstracts must include the following information, when applicable: (1) A statement indicating whether animals or humans were used in studies, (2) a statement by the senior author certifying that use of animals or animal tissues was carried out in accordance with applicable laws, regulations, and guidelines, and that the studies were approved by the appropriate Institutional Animal Care and Use Committee or equivalent, and (3) a statement that all human studies were conducted in accordance with applicable laws, regulations, and guidelines, and that the studies were approved by the appropriate Institutional Review Board or equivalent.

Abstracts must be submitted by e-mail to *niceatm@niehs.nih.gov.* The deadline for abstract submission is September 16, 2011. The corresponding author will be notified regarding the abstract's acceptance within 10 working days of the submission deadline. Guidelines for poster presentations will be sent to the corresponding authors.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found on the

NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov).*

References

WHO. 2010. Rabies vaccines: WHO Position paper. Weekly Epidemiological Record 85(32):309–320.

Dated: August 3, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–20540 Filed 8–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice To Change Catalog of Federal Domestic Assistance (CFDA) Number

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to award two awards to eligible applicants of State or Territorial Public Health Newborn Bloodspot Screening Programs. These activities are proposed by the above-mentioned grantees in their FY 2011 applications submitted under funding opportunity CDC–RFA–EH11–001, ''Program to Support New Implementation of State or Territorial Public Health Laboratory Capacity for Newborn Bloodspot Screening of Severe Combined Immune Deficiency (SCID) (U01), '' Catalog of Federal Domestic Assistance Number (CFDA): 93.070. Approximately $900,000 in funding will be awarded to the grantees for the implementation of newborn screening for SCID.

Accordingly, CDC adds the following information to the previously published funding opportunity announcement of EH11–001:

Authority: Authorized under Section 301 of the Public Health Service Act, [42 U.S.C. 241], as amended.

CFDA #: 93.070 Environmental Public Health Emergency Response.

Award Information

Type of Award: New Competing Cooperative Agreement.

Approximate Total Current Fiscal Year ACA Funding: $900,000.

Anticipated Number of Awards: 2.

Fiscal Year Funds: 2011.

Anticipated Award Date: September 1, 2011.

Application Selection Process

Funding will be awarded to applicants based on results from the peer review panel ranking recommendations.

Funding Authority

CDC will add the authority to that which is reflected in the published Funding Opportunity CDC–RFA–EH11–001. The revised funding authority language will read:

—Authorized under Section 301 of the Public Health Service Act, [42 U.S.C. 241], as amended.

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the funded applications.

FOR FURTHER INFORMATION CONTACT: Beth Gardner, Extramural Team Lead, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Hwy., Atlanta, GA 30341, telephone (770) 488–0572, e-mail *Bgardner@cdc.gov.*

SUPPLEMENTARY INFORMATION: None.

Dated: August 3, 2011.

James Stephens,

Director of the Office of Science Quality, Centers for Disease Control and Prevention.

[FR Doc. 2011–20507 Filed 8–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 47189–47190, dated August 4, 2011) is amended to reflect the reorganization of the Center for Global Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: After the title and functional statements for the Division of Global Disease Detection and Emergency Response (CWJ), insert the following:

Global Immunization Division (CWK). The Global Immunization Division (GID) protects the health of Americans and global citizens by preventing disease, disability, and death worldwide from vaccine-preventable diseases. In carrying out its mission, GID: (1) Provides national leadership and coordination of the CGH efforts to eradicate polio, control or eliminate measles, strengthen routine immunization programs, introduce new and under-utilized vaccines, and promote safe injection practices, in collaboration with international organizations and CDC Centers/Institute/Offices; (2) provides short- and long-term consultation and technical assistance to the WHO, UNICEF, and foreign countries involved in global immunization activities and participates in international advisory group meetings on immunization issues; (3) administers grants to WHO, Pan American Health Organization (PAHO), UNICEF, and other international partners as appropriate for the provision of technical, programmatic, and laboratory support, and vaccine procurement for initiatives to support global immunization targets; (4) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of immunization strategies as may be developed; (5) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care workers in other countries; (6) refines strategies developed for the eradication or control of vaccine-preventable diseases in the Western Hemisphere for implementation in other parts of the world; (7) assists other countries, WHO, and other partners to improve surveillance for polio, measles, and other vaccine preventable diseases (VPDs); (8) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (9) collaborates with other countries, WHO, UNICEF, and advocacy groups to ensure the availability of sufficient funds to purchase an adequate supply of polio, measles, and other vaccines, and funds for technical support for use in eradication and control efforts; and (10) provides technical and operational leadership for CDC's activities in support of the immunization initiatives such as Global Alliance for Vaccines and Immunization and the Global Immunization Vision and Strategies.

Office of the Director (CWK1). (1) Provides leadership, management, and oversight for all division activities; (2) provides coordination of budgeting and liaison with CGH, and FMO on budget and spending; (3) provides coordination and oversight of the division's

personnel actions including liaison with CGH and CDC's human resource office; (4) develops and promotes partnerships with other organizations to support global immunization activities; (5) liaises and coordinates with other CDC offices engaged in global immunization activities; (6) provides coordination and oversight of division research and scientific publications, and liaison with other CDC offices involved in scientific oversight; (7) provides coordination of the division communications activities including liaison with other CDC communications offices and those of our partner agencies; (8) represents CDC, CGH, and the division at global and national meetings and other fora for global immunization activities; and (9) provides oversight for all Embassy/International Cooperative Administrative Supportive Services costs for the division's field staff.

Vaccine Preventable Disease Eradication and Elimination Branch (CWKB). (1) Plans, coordinates, and directs, in collaboration with partners, technical and programmatic activities to eradicate or eliminate/control targeted VPDS; (2) participates in developing and implements improvements to immunization services, surveillance, monitoring, evaluation, and data management program elements for targeted diseases; (3) manages teams that coordinate regional activities and provide guidance and support to the Vaccine Preventable Disease Eradication and Elimination Branch (VPDEEB) staff assigned in the European Region, Eastern Mediterranean Region, African Region, South East Asia Region, and Western Pacific Region WHO regions; (4) participates in multilateral collaborations with an extensive array of CDC and external partners engaged in VPD eradication and elimination including: participating countries, other CDC organizations, other U.S. Government organizations, international organizations including WHO, the United Nations Foundation, UNICEF, and the World Bank; nongovernmental, private sector organizations and vaccine producers, and international advisory committees; (5) provides subject-matter expertise, short- and long-term consultations, and coordinates epidemiology, surveillance, and laboratory activities for programs to eradicate and eliminate VPDs; (6) participates in operation research, monitoring and evaluation projects and studies to improve VPD eradication and control programs and prepares articles based on findings for publication in international professional journals and presentation at international conferences; (7) assists with outbreak investigations and emergency response activities; (8) provides technical management for grants and cooperatives agreements for vaccine procurement and for provision of technical, programmatic, and laboratory support.

Strengthening Immunization Systems Branch (CWKC). (1) Develops and brings to routine operational level, in collaboration with partners, programs to deliver established, newly available, or under-utilized vaccines for diseases of global importance; (2) assesses the impact of immunization service delivery through surveillance, monitoring of vaccine coverage, and operations research; (3) develops, evaluates, and recommends improvements to strengthen routine immunization programs, including those related to laboratory-based and integrated surveillance systems; immunization coverage, economic evaluations and post-introduction evaluations; (4) provides subject-matter expertise and short- and long-term consultations; (5) participates in multilateral collaborations with an extensive array of CDC and external partners engaged in delivery of routine services, surveillance, and coverage monitoring of VPDs including: participating countries, other CDC organizations, other U.S. Government organizations, international organizations including WHO, the United Nations Foundation, UNICEF, and the World Bank; non-governmental, private sector organizations and vaccine producers, and international advisory committees; (6) assists partner countries to build capacity in the areas of service delivery, surveillance, health information systems, data management, laboratory services and surveillance, and decision-making to achieve effective, efficient, and sustainable immunization programs; (7) manages and provides guidance and support for the GID PAHO team that coordinates PAHO regional activities; (8) evaluates, in collaboration with partners, projects that integrate non-vaccine interventions with routine immunization programs; (9) designs and participates in research, monitoring and evaluation projects and studies to improve existing and newly developing VPD control and eradication programs and prepares articles based on findings for publication in international professional journals and presentation at international conferences; (10) assists with outbreak investigations and emergency response activities.

Delete in its entirety the functional statements for the Global Immunization Division (CVGC) within the National Center for Immunization and Respiratory Diseases (CVG).

Dated: August 3, 2011.

Carlton Duncan,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–20355 Filed 8–11–11; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5502–N2]

Medicare Program; Accountable Care Organization Accelerated Development Learning Sessions; Center for Medicare and Medicaid Innovation, September 15th and 16th, 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the second in a series of public educational sessions hosted by the Centers for Medicare & Medicaid Services (CMS). This two-day training session is the second Accelerated Development Learning Session (ADLS) hosted by CMS to help Accountable Care Organizations (ACOs) deliver better care and reduce costs. We invite all new or existing ACO entities to register a team of senior executives to attend the in-person ADLS. The ADLS will provide executives with the opportunity to learn about core functions of an ACO and ways to build their organization's capacity to succeed as an ACO.

DATES: *Meeting Date:* Thursday, September 15, 2011, 8 a.m to 5 pm., pacific daylight time (p.d.t): Friday, September 16, 2011, 8 a.m. to 5 p.m. (p.d.t).

Deadline for Meeting Registration: Registration for the second ADLS will remain open until capacity has been reached for the September 15 through 16 in-person meeting. Space is limited and participants are encouraged to register as soon as possible.

ADDRESSES: *Meeting Location:* The second ADLS will be held at the Hyatt Regency San Francisco Airport at 1333 Bayshore Highway, Burlingame, CA 94010. Participants are responsible for their own travel, parking, meals, and overnight stay expenses. More information about the venue and accommodations can be found at *https://acoregister.rti.org/.* Potential participants are also strongly

encouraged to complete the comprehensive planning tool discussed in section II of this notice before arriving to the meeting.

Meeting Registration, Presentations, and Written Comments: Registration information and documents can be accessed online at *https://acoregister.rti.org/.*

Registration: Eligible organizations interested in registering for the ADLS should visit *https://acoregister.rti.org/* for information about registration.

FOR FURTHER INFORMATION CONTACT: Additional information is available on the registration Web site at *https://acoregister.rti.org/.* Click on ''contact us'' to send questions or comments via e-mail. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1115A of the Social Security Act (the Act), as added by section 3021 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the Affordable Care Act), established the Center for Medicare and Medicaid Innovation (Innovation Center) for the purpose of examining new ways of delivering health care and paying health care providers in ways that can save money for Medicare, Medicaid and CHIP while improving the quality of care for our beneficiaries. Through Accelerated Development Learning Sessions (ADLS), the Innovation Center will test whether intensive shared learning activities will expand and improve the capabilities of provider organizations to coordinate the care of a population of Medicare beneficiaries more effectively than organizations that do not participate in the ADLS. Well coordinated care can improve beneficiaries' quality outcomes and reduce the growth of Medicare expenditures.

Completion of the ADLS will not be a factor for selection or participation in a CMS ACO program. It is intended to provide ACOs with the opportunity to learn from their peers about essential ACO functions and various ways to build capacity needed to achieve better care for individuals, better population health, and lower growth in health care expenditures.

The ACO ADLSs were first announced in the May 19, 2011 **Federal Register** (76 FR 28988).

Each participating team should consist of two to four senior-level leaders (including at least one executive with financial/management responsibility and one with clinical responsibility). Participants are also asked to attend future Web based seminars and complete a full ACO implementation plan as part of the broader ADLS initiative to facilitate ongoing learning and evaluation.

Information for all future ADLS will be posted online at *https://acoregister.rti.org* as it becomes available.

II. Completion of Planning Tool and Session Registration Information

Registrants need to complete the registration form in order to participate in an ACO ADLS. Potential participants are also strongly encouraged to complete a comprehensive planning tool, which will allow them to take full advantage of the hands-on learning activities during the ADLS. The registration form and comprehensive planning tool are available on the ACO ADLS Web site at *https://acoregister.rti.org.*

Authority: Section 1115A of the Social Security Act.

Dated: August 3, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–20543 Filed 8–11–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Parents and Children Together—Discussion Guide.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACE), U.S. Department of Health and Human Services is proposing an information collection activity as part of an evaluation of healthy marriage and responsible fatherhood grant programs. The evaluation study title is: Parents and Children Together (PACT). This phase of information collection will involve discussion of a range of topics with key informants in grantee and partner organizations such as their organizational structure, program services, populations served and specific approaches for the grant programs.

The information will be used by ACF for the identification and selection of grantee programs to be included in the evaluation.

Respondents: Semi-structured discussions will be held with administrators and managers of healthy marriage and responsible fatherhood grants and, where appropriate, administrators and managers of key partner agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Discussion Guide	150	1	1	150

Estimated Total Annual Burden Hours: 150.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 8, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–20495 Filed 8–11–11; 8:45 am]

BILLING CODE 4184–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Announcement of a Single Source Grant Award to the Tribal Law and Policy Institute

AGENCY: Children's Bureau, Administration on Children, Youth and Families, HHS.

ACTION: Notice to award a single source program expansion supplement grant to the Tribal Law and Policy Institute, located in West Hollywood, CA, to support activities of the National Resource Center for Tribes under the Tribal Maternal, Infant, Early Childhood Home Visiting Program.

CFDA Number: 93.508.

Statutory Authority: Social Security Act, Title V, Section 511 (42 U.S.C. 701), as amended by the Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. 111–148.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Children's Bureau (CB) announces the award of a single source program expansion supplement grant to the Tribal Law and Policy Institute, West Hollywood, CA, for the National Resource Center (NRC) for Tribes. The program expansion supplement funds will be used to provide technical assistance and support for the planning, development and implementation of the Tribal Maternal, Infant and Early Childhood Home Visiting program.

The NRC for Tribes will provide technical assistance to ACF Tribal Home Visiting grantees to enhance their capacity to plan for and implement high-quality, evidence-based, and evidence-informed programs. Implementation of the NRC4Tribes work will include engaging, assessing, informing and supporting culturally-appropriate Tribal home visiting services that are part of coordinated early childhood systems in the American Indian and Alaska Natives (AIAN) communities and that support quality and effectiveness of services for AIAN children, youth, and families, which leads to increased safety, permanency, and well-being for children.

The Tribal Law and Policy Institute NRC for Tribes and its partner agencies are uniquely qualified to provide training and technical assistance to Tribes based upon their experience, expertise, and commitment to increasing cultural competency and sensitivity to the Tribal point of view in training and technical assistance. The NRC for Tribes expertise in Tribal culture, child maltreatment prevention, collaboration, evaluation, and implementation of evidence-based programs and practices makes them an appropriate recipient of supplemental funds to carry out this project.

Amount of Award: $150,000.

Project Period: May 15, 2011 to September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Roshanda Shoulders, Children's Bureau, 1250 Maryland Ave., SW., 8th Floor, Washington, DC 20024. Telephone: (202) 401–5323. E-mail: *roshanda.shoulders@acf.hhs.gov.*

Dated: August 2, 2011.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2011–20278 Filed 8–11–11; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0271]

Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments, including scientific and other information, concerning the harmful and potentially harmful constituents (HPHCs) in tobacco products and tobacco smoke. This information will assist the Agency in establishing a list of HPHCs in tobacco products and tobacco smoke (the HPHC list).

DATES: Submit either electronic or written comments by October 11, 2011.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Carol Drew, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 904(e) of the FD&C Act (21 U.S.C. 387d(e)), as added by the Tobacco Control Act, requires FDA to establish, and periodically revise as appropriate, ''a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand.'' Section 904(e) of the FD&C Act also requires that FDA ''publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.''

The Agency has solicited scientific and other information from interested persons and has developed a list of tobacco product constituents it currently believes are harmful or potentially harmful to health. Although the Agency's work to date reflects consideration of substantial scientific and other information, we believe that additional information from the public may be beneficial to the Agency before it establishes the list described in section 904(e) of the FD&C Act. We are therefore publishing the Agency's

current list as table 1 of this document and requesting public comment as described in section II of this document. In this section of the document, we are also providing information about the Agency's guidance on HPHCs, the criteria that the Agency used to help develop the list, and reasons the Agency might add or remove constituents.

On June 10, 2010, FDA announced the availability for public comment of a draft guidance for industry and FDA staff entitled ''Harmful and Potentially Harmful Constituents' in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act'' (75 FR 32952). FDA announced the availability of the final guidance on January 31, 2011 (76 FR 5387) (available at *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation*) (HPHC final guidance). This final guidance represents the Agency's current thinking on the meaning of the term ''harmful and potentially harmful constituent'' in the context of implementing section 904(e) of the FD&C Act. It states: ''FDA believes that the phrase 'harmful and potentially harmful constituent' includes any chemical or chemical compound in a tobacco product or in tobacco smoke: (a) That is or potentially is inhaled, ingested, or absorbed into the body; and (b) that causes or has the potential to cause direct or indirect harm to users or non-users of tobacco products.''(HPHC final guidance at page 2). The HPHC final guidance includes examples of constituents that have the potential to cause direct harm and examples of constituents that have the potential to cause indirect harm: ''Examples of constituents that have the 'potential to cause direct harm' to users or non-users of tobacco products include constituents that are toxicants, carcinogens, and addictive chemicals and chemical compounds. Examples of constituents that have the 'potential to cause indirect harm' to users or non-users of tobacco products include constituents that may increase the exposure to the harmful effects of a tobacco product constituent by: (1) Potentially facilitating initiation of the use of tobacco products; (2) potentially impeding cessation of the use of tobacco products; or (3) potentially increasing the intensity of tobacco product use (*e.g.,* frequency of use, amount consumed, depth of inhalation). Another example of a constituent that has the 'potential to cause indirect harm' is a constituent that may enhance the harmful effects of a tobacco product constituent.'' (HPHC final guidance at page 2).

On May 1, 2010, the Agency established a subcommittee of the Tobacco Products Scientific Advisory Committee (TPSAC),[1] the Tobacco Product Constituents Subcommittee (the subcommittee), and charged the subcommittee with making preliminary recommendations to TPSAC on HPHCs in tobacco products and tobacco smoke. The subcommittee held public meetings on June 8 and 9, 2010, and July 7, 2010. Prior to these meetings, FDA solicited data, information, and/or views on HPHCs in tobacco products and tobacco smoke from the public, and at the June meeting, presentations were made by interested persons.[2] At these meetings the subcommittee:

- Reviewed example lists of HPHCs developed by other countries and organizations;
- Identified criteria for selecting carcinogens, toxicants, and addictive chemicals or chemical compounds in tobacco products and tobacco smoke;
- Identified chemicals or chemical compounds that met the identified criteria;
- Confirmed the existence of methods for measuring each chemical or chemical compound identified; and
- Identified other potentially important information or criteria for measuring HPHCs in tobacco products or tobacco smoke, such as smoking machine regimens to be used in measuring HPHCs.

The subcommittee made preliminary recommendations to TPSAC.

On August 30, 2010, TPSAC held a public meeting to deliberate on the recommendations from the subcommittee. Prior to this meeting, FDA published a notice in the **Federal Register** soliciting data, information, and/or views from the public on the issues to be discussed at this meeting.[3] FDA asked what criteria TPSAC recommended the Agency use for determining whether a constituent is a carcinogen, toxicant, or addictive chemical or chemical compound that should be included on the HPHC list. As a result of its discussions, TPSAC recommended to the Agency the following criteria for selecting the HPHC list:

- Constituents identified as known, likely, probably, or possible human carcinogens by the U.S. Environmental Protection Agency (EPA);
- Constituents identified as known, probable, or possible carcinogens by the International Agency for Research on Cancer (IARC) including IARC Group 1 (carcinogenic to humans), IARC Group 2 (probably carcinogenic to humans), and IARC Group 2B (possibly carcinogenic to humans);
- Constituents identified as human carcinogens or reasonably anticipated to be human carcinogens by the National Toxicology Program (NTP);
- Constituents identified as potential occupational carcinogens by the National Institute for Occupational Safety and Health (NIOSH):
- Constituents identified by EPA or the Agency for Toxic Substances and Disease Registry (ATSDR) as having adverse respiratory or cardiac effects;
- Constituents identified by the California Environmental Protection Agency (CA EPA) as reproductive or developmental toxicants;
- Constituents having, based upon a review of the peer-reviewed literature, evidence of at least two of the following measures of abuse liability (addiction):
  - Central nervous system activity;
  - Animal drug discrimination;
  - Conditioned place preference;
  - Animal self-administration;
  - Human self-administration;
  - Drug liking;
  - Signs of withdrawal; and
- Constituents banned in food (for smokeless tobacco products).

FDA believes having criteria for use in determining whether a constituent is harmful or potentially harmful will be beneficial. FDA carefully evaluated the data, information, and views on HPHCs in tobacco products provided by TPSAC and the public, in light of the Agency's own knowledge and expertise, and taking into consideration its HPHC final guidance. Based on this evaluation, FDA tentatively concludes that it should use the criteria listed previously in this document in determining whether a constituent should be included on the HPHC list. Specifically, FDA has tentatively concluded that it should consider a constituent meeting these criteria to be harmful or potentially harmful, such that it should be included on the HPHC list, unless other scientific information obtained by or submitted to the Agency shows that the constituent is

[1] Information about TPSAC as well as information and background materials on TPSAC meetings are available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/default.htm.*

[2] See 75 FR 22147 (April 27, 2010), and 75 FR 33814 (June 15, 2010). Information submitted to the public docket for each of these meetings is available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm222977.htm* and *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm222978.htm.*

[3] See 75 FR 47308 (August 5, 2010). Information submitted by the public to the docket for this meeting is available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm232799.htm.*

not, in fact, harmful or potentially harmful. Applying this approach to the criteria and the available information, FDA developed table 1 of this document.

FDA recognizes that table 1 of this document may not include all constituents that are ''harmful or potentially harmful.'' For example, the criteria described previously in this document generally depend on a chemical or chemical compound being both studied and listed by another entity, such as constituents identified by EPA or ATSDR as having adverse respiratory or cardiac effects. The fact that a constituent has not been so identified by EPA or ATSDR could be because it has not been adequately studied or has not yet been systematically reviewed by relevant agencies, rather than because the constituent does not have adverse respiratory or cardiac effects. Moreover, FDA has only focused on the five disease outcomes of cancer, cardiovascular disease, respiratory effects, developmental or reproductive effects, and addiction. FDA intends to review other disease outcomes to assess whether additional chemicals or chemical compounds in tobacco products or tobacco smoke are harmful or potentially harmful constituents that contribute to the risk of other diseases. Similarly, the criteria FDA has tentatively selected are limited to those that relate to carcinogens, toxicants, and addictive chemicals or chemical compounds in tobacco products and tobacco smoke. We intend to consider whether additional criteria should be selected to help identify other classes of harmful or potentially harmful chemicals and chemical compounds for inclusion on the HPHC list, and whether individual constituents should be added. Just as these types of new information may lead to additions to the list, FDA recognizes that it may become aware of new scientific information about constituents of tobacco products that make it appropriate to remove one or more of the constituents that appear on the list. For these reasons, FDA will continue to review scientific information about tobacco product constituents. FDA intends to do this both before and after it establishes its list of HPHCs for the purpose of section 904(e) of the FD&C Act, consistent with the directive in section 904(e) that the Agency periodically revise the list as appropriate.

II. Request for Comments and Information

FDA is soliciting public comment, including scientific and other information, concerning the HPHCs in tobacco products and tobacco smoke. We are particularly interested in comments from the public on the following topics:

- The criteria FDA should use in determining whether a constituent is harmful or potentially harmful such that it should be included on the HPHC list;
- Whether any chemicals or chemical compounds not listed in table 1 of this document should be added because they are harmful or potentially harmful, including supporting scientific or other information; and/or
- Whether any of the chemicals or chemical compounds listed in table 1 of this document should be removed because they are not harmful or potentially harmful, including supporting scientific or other information.

III. Submission of Comments

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

TABLE 1—LIST OF THE CHEMICALS AND CHEMICAL COMPOUNDS IDENTIFIED BY FDA AS HARMFUL AND POTENTIALLY HARMFUL CONSTITUENTS IN TOBACCO PRODUCTS AND TOBACCO SMOKE

Constituent	Carcinogen (CA), respiratory toxicant (RT), cardiovascular toxicant (CT), reproductive or developmental toxicant (RDT), addictive (AD)
Acetaldehyde	CA, RT, AD
Acetamide	CA
Acetone	RT
Acrolein	RT, CT
Acrylamide	CA
Acrylonitrile	CA, RT
Aflatoxin B1	CA
4–Aminobiphenyl	CA
1–Aminonaphthalene	CA
2–Aminonaphthalene	CA
Ammonia	RT
Anabasine	AD
o-Anisidine	CA
Arsenic	CA, CT, RDT
A-α-C (2-Amino-9*H*-pyrido[2,3-*b*]indole)	CA
Benz[*a*]anthracene	CA, CT
Benz[*j*]aceanthrylene	CA
Benzene	CA, CT, RDT
Benzo[*b*]fluoranthene	CA, CT
Benzo[*k*]fluoranthene	CA, CT
Benzo[*b*]furan	CA
Benzo[*a*]pyrene	CA
Benzo[*c*]phenanthrene	CA
Beryllium	CA
1,3–Butadiene	CA, RT, RDT
Cadmium	CA, RT, RDT

TABLE 1—LIST OF THE CHEMICALS AND CHEMICAL COMPOUNDS IDENTIFIED BY FDA AS HARMFUL AND POTENTIALLY HARMFUL CONSTITUENTS IN TOBACCO PRODUCTS AND TOBACCO SMOKE—Continued

Constituent	Carcinogen (CA), respiratory toxicant (RT), cardiovascular toxicant (CT), reproductive or developmental toxicant (RDT), addictive (AD)
Caffeic acid	CA
Carbon monoxide	RDT
Catechol	CA
Chlorinated dioxins/furans	CA, RDT
Chromium	CA, RT, RDT
Chrysene	CA, CT
Cobalt	CA, CT
Coumarin	Banned in food
Cresols (o-, m-, and p-cresol)	CA, RT
Crotonaldehyde	CA
Cyclopenta[*c,d*]pyrene	CA
Dibenz[*a,h*]acridine	CA, CT
Dibenz[*a,j*]acridine	CA
Dibenz[*a,h*]anthracene	CA
Dibenzo[*c,g*]carbazole	CA
Dibenzo[*a,e*]pyrene	CA
Dibenzo[*a,h*]pyrene	CA
Dibenzo[*a,i*]pyrene	CA
Dibenzo[*a,l*]pyrene	CA
2,6-Dimethylaniline	CA
Ethyl carbamate (urethane)	CA, RDT
Ethylbenzene	CA
Ethylene oxide	CA, RT, RDT
Formaldehyde	CA, RT
Furan	CA
Glu-P-1 (2-Amino-6-methyldipyrido[1,2-*a*:3',2'-*d*]imidazole)	CA
Glu-P-2 (2-Aminodipyrido[1,2-*a*:3',2'-*d*]imidazole)	CA
Hydrazine	CA, RT
Hydrogen cyanide	RT, CT
Indeno[*1,2,3-cd*]pyrene	CA
IQ (2-Amino-3-methylimidazo[4,5-*f*]quinoline)	CA
Isoprene	CA
Lead	CA, CT, RDT
MeA-α-C (2-Amino-3-methyl)-9*H*-pyrido[2,3-*b*]indole)	CA
Mercury	CA, RDT
Methyl ethyl ketone	RT
5-Methylchrysene	CA
4-(Methylnitrosamino)-1-(3-pyridyl)-1-butanone (NNK)	CA
Naphthalene	CA, RT
Nickel	CA, RT
Nicotine	RDT, AD
Nitrobenzene	CA, RT, RDT
Nitromethane	CA
2-Nitropropane	CA
N-Nitrosodiethanolamine (NDELA)	CA
N-Nitrosodiethylamine	CA
N-Nitrosodimethylamine (NDMA)	CA
N-Nitrosomethylethylamine	CA
N-Nitrosomorpholine (NMOR)	CA
N-Nitrosonornicotine (NNN)	CA
N-Nitrosopiperidine (NPIP)	CA
N-Nitrosopyrrolidine (NPYR)	CA
N-Nitrososarcosine (NSAR)	CA
Nornicotine	AD
Phenol	RT, CT
PhIP (2-Amino-1-methyl-6-phenylimidazo[4,5-*b*]pyridine)	CA
Polonium-210	CA
Propionaldehyde	RT, CT
Propylene oxide	CA, RT
Quinoline	CA
Selenium	RT
Styrene	CA
o-Toluidine	CA
Toluene	RT, RDT
Trp-P-1 (3-Amino-1,4-dimethyl-5*H*-pyrido[4,3-*b*]indole)	CA
Trp-P-2 (1-Methyl-3-amino-5*H*-pyrido[4,3-*b*]indole)	CA

TABLE 1—LIST OF THE CHEMICALS AND CHEMICAL COMPOUNDS IDENTIFIED BY FDA AS HARMFUL AND POTENTIALLY HARMFUL CONSTITUENTS IN TOBACCO PRODUCTS AND TOBACCO SMOKE—Continued

Constituent	Carcinogen (CA), respiratory toxicant (RT), cardiovascular toxicant (CT), reproductive or developmental toxicant (RDT), addictive (AD)
Uranium-235	CA, RT
Uranium-238	CA, RT
Vinyl acetate	CA, RT
Vinyl chloride	CA

Dated: August 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–20502 Filed 8–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0556]

Center for Devices and Radiological Health 510(k) Clearance Process; Recommendations Proposed in Institute of Medicine Report: ''Medical Devices and the Public's Health, The FDA 510(k) Clearance Process at 35 Years;'' Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled: ''Recommendations Proposed in Institute of Medicine Report: 'Medical Devices and the Public's Health, The FDA 510(k) Clearance Process at 35 Years.' '' The purpose of the public meeting is to encourage public comment on the recommendations proposed in the Institute of Medicine (IOM) report.

Date and Time: The public meeting will be held on September 16, 2011, from 8:30 a.m. to 5 p.m. Submit electronic and written comments by September 30, 2011.

Location: The public meeting will be held at the Silver Spring Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD 20910.

Contact Person: Philip Desjardins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5452, Silver Spring, MD 20993, 301–796–5678, *philip.desjardins@fda.hhs.gov.*

Registration and Requests for Oral Presentations: Registration is free and will be on a first-come, first-served basis. Persons interested in attending this meeting must register online by 5 p.m. on September 15, 2011. For those without Internet access, please call the contact person to register.

Early registration is recommended because seating is limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan (email: *Susan.Monahan@fda.hhs.gov* or phone: 301–796–5661) no later than September 15, 2011.

To register for the public meeting, please visit *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (or go to the FDA Medical Devices News & Events—Workshops & Conferences calendar and select this public meeting from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, telephone, and FAX number. Registrants will receive confirmation once they have been accepted. You will be notified if you are on a waitlist.

This meeting includes a public comment session. During online registration you may indicate if you wish to make an oral presentation during a public comment session at the public meeting, and which topic you wish to address in your presentation. FDA has included topics for comment in this document. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin. All requests to make oral presentations, as well as presentation materials, must be sent to the contact person by September 15, 2011.

Comments: Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments until September 30, 2011. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. What is the background and purpose for holding this public meeting?

In September 2009, FDA's Center for Devices and Radiological Health (CDRH) convened an internal 510(k) Working Group as part of a two-pronged, comprehensive assessment of the premarket notification (510(k)) process. The first prong of this evaluation consisted of an internal evaluation of the 510(k) process, resulting in the publication of the CDRH preliminary internal evaluation entitled ''510(k) Working Group Preliminary Report and Recommendations'' (*http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDRH/CDRHReports/UCM220784.pdf*). This preliminary report was intended to communicate preliminary findings and recommendations regarding the 510(k) program and actions CDRH might take to address identified areas of concern. The report was issued on August 5, 2010 (75 FR 47307). After reviewing public comment, CDRH issued a plan of action for implementation of the previously announced

recommendations on January 19, 2011 (*http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDRH/CDRHReports/UCM239450.pdf*).

The second prong of the comprehensive assessment of the 510(k) process was an independent study by the IOM. At the request of FDA, IOM evaluated the 510(k) clearance process and made recommendations aimed at protecting the health of the public and making available a mechanism to achieve timely access of medical devices to the market. On July 29, 2011, IOM released the report ''Medical Devices and the Public's Health, The FDA 510(k) Clearance Process at 35 Years'' (report) (*http://www.iom.edu/Reports/2011/Medical-Devices-and-the-Publics-Health-The-FDA–510k-Clearance-Process-at-35–Years.aspx*). The report contains eight recommendations aimed at improving regulation of medical devices. The recommendations are the subject of this public meeting.

II. What are the specific issues for discussion and public comment at the public meeting?

FDA welcomes comments on the following recommendations provided in the IOM report:

1. The Food and Drug Administration should obtain adequate information to inform the design of a new medical device regulatory framework for class II devices so that the current 510(k) process, in which the standard for clearance is substantial equivalence to previously cleared devices, can be replaced with an integrated premarket and postmarket regulatory framework that effectively provides a reasonable assurance of safety and effectiveness throughout the device life cycle. Once adequate information is available to design an appropriate medical device regulatory framework, Congress should enact legislation to do so.

2. FDA should develop and implement a comprehensive strategy to collect, analyze, and act on medical device postmarket performance information.

3. FDA should review its postmarket regulatory authorities for medical devices to identify existing limitations on their use and to determine how the limitations can be addressed.

4. FDA should investigate the viability of a modified de novo process as a mechanism for evaluating the safety and effectiveness of class II devices.

5. FDA should develop and implement a program of continuous quality improvement to track regulatory decisions on medical devices, identify potential process improvements in the medical device regulatory framework, and address emerging issues that affect decisionmaking.

6. FDA should commission an assessment to determine the effect of its regulatory process for class II devices on facilitating or inhibiting innovation in the medical device industry.

7. FDA should develop procedures that ensure the safety and effectiveness of software used in devices, software used as devices, and software used as a tool in producing devices.

8. FDA should promptly call for PMA applications for or reclassify class III devices that remain eligible for 510(k) clearance.

III. Where can I find out more about this public meeting?

Background information on the public meeting, registration information, the agenda, information about lodging, transcripts, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.*

IV. Will there be transcripts of the meeting?

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: August 9, 2011.

Nancy K. Stade,

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

[FR Doc. 2011–20575 Filed 8–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0530]

Mobile Medical Applications Draft Guidance; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Mobile Medical Applications Draft Guidance.'' The purpose of the workshop is to provide a forum for discussion with FDA and to encourage public comment on the following topics: FDA's recently issued draft guidance document entitled ''Mobile Medical Applications,'' how FDA should approach accessories and particularly mobile medical applications that are accessories to other medical devices, and standalone software that provides clinical decision support.

Date and Time: The public workshop will be held on September 12 and 13, 2011. Submit electronic and written comments by October 19, 2011.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002.

Contact Person: Bakul Patel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5456, Silver Spring, MD 20993, 301–796–5528, *Bakul.Patel@fda.hhs.gov.*

Registration and Requests for Oral Presentations: Registration is free and will be on a first-come, first-served basis. Persons interested in attending this workshop must register online by 5 p.m. on September 9, 2011. For those without Internet access, please call the contact person to register.

Early registration is recommended because seating is limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m. Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible.

If you need special accommodations due to a disability, please contact Susan Monahan (e-mail: *Susan.Monahan@fda.hhs.gov* or phone: 301–796–5661) no later than September 9, 2011.

This workshop will also be provided via webcast. Persons interested in participating by webcast must register online by 5 p.m. on September 9, 2011. Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but view using one connection per location. Webcast participants will be sent connection

requirements. To register for the public workshop—whether attending in person or for the webcast—please visit *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (or go to the FDA Medical Devices News & Events—Workshops & Conferences calendar and select this public workshop from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, e-mail, telephone, and FAX number. Registrants will receive confirmation once they have been accepted. You will be notified if you are on a waitlist.

This workshop includes a public comment session. During online registration you may indicate if you wish to make an oral presentation during a public comment session at the public workshop, and which topic you wish to address in your presentation. FDA has included topics for comment in this document. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin. All requests to make oral presentations, as well as presentation materials, must be sent to the contact person by September 9, 2011.

Comments: Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments until October 19, 2011. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. What is the background and purpose for holding this public workshop?

The purpose of the workshop is to provide a forum for discussion with FDA and to encourage public comment from interested stakeholders on the following issues previously raised in the notice of availability for the draft guidance (76 FR 43689, July 21, 2011): FDA's recently-issued draft guidance document entitled ''Mobile Medical Applications,'' how FDA should approach accessories and particularly mobile medical applications that are accessories to other medical devices, and stand-alone software that provides clinical decision support.

Given the rapid expansion and broad applicability of mobile applications (mobile apps), FDA issued the draft guidance, ''Mobile Medical Applications'' on July 21, 2011, to clarify the types of mobile apps to which the FDA intends to apply its authority (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm263280.htm*).

At this time, FDA intends to apply its regulatory requirements to a subset of mobile apps that the Agency is calling mobile medical applications (mobile medical apps). For purposes of the draft guidance and the public workshop discussion, a ''mobile medical app'' is a mobile application that meets the definition of ''device'' in section 201(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(h)) [1]; and either:

- Is used as an accessory to a regulated medical device; or
- Transforms a mobile platform into a regulated medical device.

This narrowly-tailored approach focuses on a subset of mobile apps that either have traditionally been considered medical devices or affect the performance or functionality of a currently regulated medical device.

Although some mobile apps that do not meet the definition of a mobile medical app may meet the FD&C Act's definition of a device, FDA intends to exercise enforcement discretion [2] towards those mobile apps.

[1] Products that are built with or consist of computer and/or software components or applications are subject to regulation as devices when they meet the definition of a device in section 201(h) of the FD&C Act. That provision defines a device as ''* * * an instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent * * *'', that is ''* * * intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man * * * '' or ''* * * intended to affect the structure or any function of the body of man or other animals * * *''.

[2] This means that FDA intends to exercise its discretion to decline to pursue enforcement actions for violations of the FD&C Act and applicable regulations by a manufacturer of a mobile medical app, as specified in the draft guidance, ''Mobile Medical Applications.'' This does not constitute a change in the requirements of the FD&C Act or any applicable regulations.

II. What are the specific issues for discussion and public comment at the public workshop?

We welcome comments on all aspects of the draft guidance as well as the following specific issues:

1. FDA generally considers extensions of medical devices as accessories to those medical devices. Accessories have been typically regulated under the same classification as the connected medical device. However, we recognize potential limitations to this policy for mobile medical apps. FDA seeks comment on how the Agency should approach accessories and particularly mobile medical apps that are accessories to other medical devices so safety and effectiveness can be reasonably assured. For example, one possible approach could be the following:

- An accessory that does not change the intended use of the connected device, but aids in the use of the connected medical device could be regulated as class I. For example, such an accessory would be similar to an infusion pump stand, which is currently classified as a class I device because it supports the intended use of an infusion pump (class II medical device). A mobile medical app that simply supports the intended use of a regulated medical device could be classified as class I with design controls as part of the quality systems requirements;
- An accessory that extends the intended use of the connected medical device could be classified with the connected device. For example, if a mobile medical app that performs more detailed analysis than the connected medical device while maintaining the original intended use, which is data analysis, could be classified in the same classification as the connected medical device; and
- An accessory that creates a new intended use from that of the connected device(s) could be classified according to the risk posed to patient safety by the new intended use, for example, if the intended use of a mobile medical app is to provide prognosis relating to a certain disease or condition and the mobile medical app is connected to a device that does not have that intended use, the mobile medical app may have a different level of risk than the connected device, resulting in a different classification to assure safety and effectiveness of the mobile medical app.

2. FDA has not addressed in its draft guidance, ''Mobile Medical Applications,'' stand-alone software (mobile or traditional workstation) that analyzes, processes, or interprets medical device data (collected

electronically or through manual entry of the device data) for purposes of automatically assessing patient specific data or for providing support in making clinical decisions. FDA plans to address such stand-alone software in a separate guidance. In order to provide a reasonable assurance of the safety and effectiveness of such software, and to ensure consistency between the draft guidance, ''Mobile Medical Applications,'' and the planned guidance on stand-alone software that provides clinical decision support (CDS), FDA is seeking comment on the following issues:

- What factors should FDA consider in determining the risk classification of different types of software that provide CDS functionality? Please provide examples of how those factors would be applied for such software that you believe should be in class I, class II, and class III;
- How should the FDA assess stand-alone software that provides CDS functionality, to assure reasonable safety and effectiveness? For example, to what extent can FDA rely on a manufacturer's demonstration that it has a robust quality system with appropriate quality assurance and design controls? Under what circumstances should the submission of clinical data be required?; and
- Are there specific controls that manufacturers should implement that could change the risk classification or reduce the premarket data requirements for particular types of stand-alone software that provide CDS functionality?

III. Where can I find out more about this public workshop?

Background information on the public workshop, registration information, the agenda, information about lodging, transcripts, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.*

IV. Will there be transcripts of the meeting?

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: August 9, 2011.

Nancy K. Stade,

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

[FR Doc. 2011–20574 Filed 8–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Web-Based Skills Training for SBIRT (Screening Brief Intervention and Referral to Treatment)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 24, 2011, Vol 76, #100, page 30177–30178, and allowed 60 days for public comment. One request for the draft instruments was received from the public. These were provided to the requestor. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Web-based Skills Training for SBIRT (Screening Brief Intervention and Referral to Treatment).

Type of Information Collection Request: NEW.

Need and Use of Information Collection: The project aims to increase the provision of screening, brief intervention, and referral to treatment (SBIRT) for substance use in primary care by developing an engaging, interactive case-based training program that will be delivered over the Internet, providing convenient access to screening and brief intervention skills training and resources for busy PCPs. The goal of this study is to evaluate the effectiveness of this training on provider behavior and/or patient outcome and the program's utility as a training tool in a real-world medical setting. The training is named SBIRT–PC. Study participants will be randomly assigned to complete SBIRT–PC or a control training, consisting of online reading materials. Effectiveness will be evaluated in terms of differential SBIRT-related knowledge, attitudes, self-efficacy, self-reported clinical practices, skills as measured by virtual standardized patient evaluations (VSPE) and a telephone-based standardized patient (SP) interaction. Participants in each condition will also complete a training satisfaction questionnaire.

Frequency of Response: On occasion.

Affected Public: Private sector; businesses or other for-profit.

Type of Respondents: Primary Care Providers.

The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per set of responses	Estimated total annual burden hours requested
Primary Care Providers	94	1	2.0	188

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans, contact: Quandra Scudder, Project Officer, National Institute on Drug Abuse NIDA, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9557, or call non-toll-free number (301) 594–0394 or E-mail your request, including your address to *scudderq@nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 4, 2011.

Mary Affeldt,

Executive Officer, (OM Director) NIDA.

[FR Doc. 2011–20542 Filed 8–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee G—Education.

Date: September 20–21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeannette F. Korczak, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 8, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20536 Filed 8–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: October 12, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training (DERT), Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: October 26, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training (DERT), Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: November 10, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training (DERT), Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the

Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20535 Filed 8–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Interagency Breast Cancer and Environmental Research Coordinating Committee. The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: October 11, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call)

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training (DERT), Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: November 8, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call)

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training (DERT), Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: December 6, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call)

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training (DERT), Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20533 Filed 8–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychiatric and Physiological Domains in Mental Diseases.

Date: September 15–16, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Boris P Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–20532 Filed 8–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the closed meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) on September 12 and 13, 2011.

On September 12 from 9 a.m. to 4 p.m. E.D.T. and September 13 from 9 a.m. to 3 p.m. E.D.T., the Board will discuss proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. This meeting is closed as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of DTAB members may be obtained as soon as possible after the meeting by accessing the SAMHSA Advisory Committees' Web site, *http://www.nac.samhsa.gov/DTAB/meetings.aspx,* or by contacting Dr. Cook.

Committee Name: Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: September 12, 2011 from 9 a.m. to 4 p.m. E.D.T.: Closed; September 13, 2011 from 9 a.m. to 3 p.m. E.D.T.: Closed.

Place: SAMHSA Office Building, Sugarloaf Conference Room, 1 Choke Cherry Road, Rockville, Maryland 20857.

Contact: Janine Denis Cook, PhD, Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Choke Cherry Road, Room 2–1045, Rockville, Maryland 20857. *Telephone:* 240–276–2600. *Fax:* 240–276–2610. *E-mail: janine.cook@samhsa.hhs.gov.*

Janine Denis Cook,

Designated Federal Official, DTAB, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2011–20498 Filed 8–11–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–400, Application for Naturalization.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 11, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form N–400. Should USCIS decide to revise Form N–400 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form N–400.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *USCISFRComment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0052 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–400, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* USCIS uses the information on this form to determine an applicant's eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 693,890 responses at 6 hours and 8 minutes (6.13 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,253,545 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 8, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–20468 Filed 8–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–470, Application to Preserve Residence for Naturalization.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 11, 2011.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *USCISFRComment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0056 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do.* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–470, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* The information furnished on Form N–470 will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 621 responses at 35 minutes (.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 362 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 8, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–20469 Filed 8–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–817, Application for Family Unity Benefits. OMB Control No. 1615–0005.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 11, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–817. Should USCIS decide to revise Form I–817 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–817.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *USCISFRComment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0005 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–817, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,750 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,500 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 8, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–20466 Filed 8–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–526, Immigrant Petition by Alien Entrepreneur. OMB Control No. 1615–0026.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 11, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–526. Should USCIS decide to revise Form I–526 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–526.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *USCISFRComment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0026 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–526, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* This form is used by the USCIS to determine if an alien can enter the U.S. to engage in commercial enterprise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,399 responses at 1 hour and 15 minutes (1.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,748 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 8, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–20465 Filed 8–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–192, Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act).

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 11, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–192. Should USCIS decide to revise Form I–192 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–192.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *USCISFRComment@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0017 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–192, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* The information collected will be used to determine whether the applicant meets the eligibility to enter the U.S. temporarily under the provisions of section 212(d)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,784 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,392 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 8, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–20475 Filed 8–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 4, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–20185 Filed 8–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2011–0010]

BOEMRE Information Collection Activity: 1010–0141, Oil and Gas Drilling Operations, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of extension of an information collection (1010–0141).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under ''Oil and Gas Drilling Operations,'' and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements and associated forms.

DATES: Submit written comments by September 12, 2011.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0141). Please also submit a copy of your comments to BOEMRE by any of the means below.

- *Electronically:* Go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BOEM–2011–0010 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- *E-mail: cheryl.blundon@boemre.gov.* Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0141 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR subpart 250, subpart D, Oil and Gas Drilling Operations.

Forms: BOEMRE Forms 0123, 0123S, 0124, 0125, 0133, 0133S, and 0144.

Note: Per Secretarial Orders 3299 and 3022, on October 1, 2011, the operation and inspection functions of BOEMRE will be transferred to a new bureau, Bureau of Safety and Environmental Enforcement (BSEE). Therefore, after October 1, these forms will be designated as BSEE forms; e.g., BOEMRE Form 0123 will be designated as Form BSEE 0123.

OMB Control Number: 1010–0141.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the Outer Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Applications for permits to drill and to modify drilling plans are subject to cost recovery, and BOEMRE regulations specify service fees for these requests.

It should be noted that over the past year, various regulations and/or NTLs regarding safety operations on the OCS have been initiated as a result of investigations, recommendations, and reports on the Deepwater Horizon event. Specifically, the subpart D regulatory requirements from the Increased Safety Measure for Energy Development on the Outer Continental Shelf, AD68 (75 FR 66632) rulemaking, are incorporated into this collection.

Regulations implementing these responsibilities are under 30 CFR part 250, subpart D. Responses are mandatory. No questions of a sensitive nature are asked. BOEMRE will protect proprietary information according to 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection,'' 30 CFR part 252, ''OCS Oil and Gas Information Program,'' and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

BOEMRE uses the information to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BOEMRE specifically uses the information to ensure: The drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H_2S and to ensure that H_2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H_2S and zones where the presence of H_2S is unknown.

The following forms are also submitted to BOEMRE under subpart D. The forms and their purposes are:

Application for Permit To Drill, BOEMRE Forms 0123 and 0123S

BOEMRE uses the information from these forms to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. Specifically, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, and cementing programs to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. BOEMRE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BOEMRE is required by the OCS Lands Act to make available to the public certain information submitted on Forms 0123 and 0123S.

Application for Permit To Modify, BOEMRE Form 0124

The information on this form is used to evaluate and approve the adequacy of the equipment, materials, and/or procedures that the lessee or operator plans to use during drilling plan modifications, changes in major drilling equipment, and plugging back. In addition, except for proprietary data, BOEMRE is required by the OCS Lands Act to make available to the public certain information submitted on Form 0124.

End of Operations Report, BOEMRE Form 0125

This information is used to ensure that they have accurate and up-to-date data and information on wells and leasehold activities under their jurisdiction and to ensure compliance with approved plans and any conditions placed upon a suspension or temporary prohibition. It is also used to evaluate the remedial action in the event of well equipment failure or well control loss. Form 0125 is updated and resubmitted in the event the well status changes. In addition, except for proprietary data, BOEMRE is required by the OCS Lands Act to make available to the public certain information submitted on Form 0125.

Well Activity Report, BOEMRE Forms 0133 and 0133S

BOEMRE uses this information to monitor the conditions of a well and status of drilling operations. We review the information to be aware of the well conditions and current drilling activity (i.e., well depth, drilling fluid weight, casing types and setting depths, completed well logs, and recent safety equipment tests and drills). The engineer uses this information to determine how accurately the lessee anticipated well conditions and if the lessee or operator is following the approved Application for Permit to Drill (Form 0123). The information is also used for review of an APM (Form 0124). With the information collected on Form 0133 available, the reviewers can analyze the proposed revisions (e.g., revised grade of casing or deeper casing setting depth) and make a quick and informed decision on the request.

Rig Movement Notification Report, BOEMRE Form 0144

As activity increased over the years in the Gulf of Mexico (GOM), the rig notification requirement became essential for BOEMRE inspection scheduling and has become a standard condition of approval for certain permits. BOEMRE needs the information on Form 0144 to schedule inspections and verify that the equipment being used complies with approved permits. In reporting rig movements respondents have the option of submitting the form or using a web-based system for electronic data submissions. The information on this form is used primarily in the GOM to ascertain the precise arrival and departure of all rigs in OCS waters in the GOM. The accurate location of these rigs is necessary to facilitate the scheduling of inspections by BOEMRE personnel.

Out of the seven forms associated with this collection, we have made some minor editorial changes for clarity purposes to Forms 0123 and 0123S and we have added plug information to be submitted via Form 0125. The information is on the schematic that is submitted as an attachment.

Frequency: On occasion, annual; and as required in the permit.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 215,624 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart D and NTL(s)	Reporting and recordkeeping requirement	Non-hour cost burdens*		
		Hour Burden	Average number of annual responses	Annual burden hours (rounded)
General Requirements				
402(b)	Request approval to use blind or blind-shear ram or pipe rams and inside BOP.	0.5	6 requests	3
403	Notify BOEMRE of drilling rig movement on or off drilling location.	0.1	20 notices	2
	In GOM, rig movements reported on Form 0144	0.2	151 forms	31
404	Perform operational check of crown block safety device; record results (weekly).	0.25	80 drilling rigs × 52 weeks = 4,160.	1,040
408, 409	Apply for use of alternative procedures and/or departures not requested in BOEMRE forms (including discussions with BOEMRE or oral approvals).	Burden covered under 1010–0114.		0
Subtotal			4,337 Responses.	1,076

Citation 30 CFR 250 Subpart D and NTL(s)	Reporting and recordkeeping requirement	Non-hour cost burdens*		
		Hour Burden	Average number of annual responses	Annual burden hours (rounded)
Apply for a Permit To Drill				
410–418, 420(a)(6); 423(b)(3), (c)(1); 449(j), (k); 456(j); plus various references in subparts A, B, D, E, H, P, Q.	Apply for permit to drill, sidetrack, bypass, or deepen a well that includes any/all supporting documentation/evidence [test results, calculations, verifications, procedures, criteria, qualifications, etc.] and request for various approvals required in subpart D (including §§ 250.424; 425; 427; 428; 432; 442(c); 447; 448(c); 451(g); 460; 490(c)) and submitted via BOEMRE Forms 0123 (Application for Permit to Drill) and 0123S (Supplemental APD Information Sheet).	100	372 forms	37,200
	$1,959 fee × 372 = $728,748			
410(b); 417(b)	Reference to Exploration Plan, Development and Production Plan, Development Operations Coordination Document (30 CFR 250, subpart B)—burden covered under 1010–00151.			0
416(g)(2)	Provide 24 hour advance notice of location of shearing ram tests or inspections; allow BOEMRE access to witness testing, inspections, and information verification.	0.25	100 notifications	25
417(a), (b)	Collect and report additional information on case-by-case basis if sufficient information is not available.	5	30 report	150
417(c)	Submit 3rd party review of drilling unit according to 30 CFR 250, subpart I—burden covered under 1010–0149.			0
418(e)	Submit welding and burning plan according to 30 CFR 250, subpart A—burden covered under 1010–0114.			0
Subtotal			502 Responses	37,375 Hours
			$728,748 Non-Hour Cost Burdens	
Casing and Cementing Requirements				
420(b)(3)	Submit dual mechanical barrier documentation after installation.	0.75	308 submittals	231
423(b)(4), (c)(2)	Perform pressure casing test; document results and make available to BOEMRE upon request.	0.75	1,540 tests	1,155
424	Caliper, pressure test, or evaluate casing; submit evaluation results; request approval before resuming operations or beginning repairs (every 30 days during prolonged drilling).	1	60	60
426	Record results of all casing and liner pressure tests	2	4,160 record results.	8,320
427(a)	Record results of all pressure integrity tests and hole behavior observations re formation integrity and pore pressure.	2	4,160 record results.	8,320
Subtotal			10,228 Responses.	18,086
Diverter System Requirements				
434; 467	Perform diverter tests when installed and once every 7 days; actuate system at least once every 24-hour period; record results (average 2 per drilling operation); retain all charts/reports relating to diverter tests/actuations at facility for duration of drilling well.	2	616 Responses	1,232
Blowout Preventer (BOP) System Requirements				
442(h)	Label all functions on all panels	1.	33 panels	50
442(i)	Develop written procedures for management system for operating the BOP stack and LMRP.	8	33 procedures ..	264
442(j)	Establish minimum requirements for authorized personnel to operate critical BOP equipment; require training.	Burden covered under 1010–0128.		0

Citation 30 CFR 250 Subpart D and NTL(s)	Reporting and recordkeeping requirement	Non-hour cost burdens*		
		Hour Burden	Average number of annual responses	Annual burden hours (rounded)
446(a)	Document BOP maintenance and inspection procedures used; record results of BOP inspections and maintenance actions; maintain records for 2 years; make available to BOEMRE upon request.	3	80 records	240
449(j)(2)	Document all ROV intervention function test results; make available to BOEMRE upon request.	1	110 tests	110
449(k)(2)	Document all autoshear and deadman on your subsea BOP systems function test results; make available to BOEMRE upon request.	1	110 tests	110
450; 467	Document and record BOP pressure tests results, actuations and inspections; at a minimum every 14 days; as stated for components; sign as correct. Retain all records, including charts, report and referenced documents for the duration of drilling the well.	11	80 test results	880
451(c)	Record reason for postponing BOP test (on occasion—approx. 2/year) in driller's report.	0.25	80 records	20
Subtotal			526 Responses	1,674
Drilling Fluid Requirements				
456(b), (i)	Document/record in the driller's report everytime you circulate drilling fluid; results of drilling fluid tests.	1	4,160 records	4,160
456(c), (f)	Perform various calculations; post calculated drill pipe, collar, and drilling fluid volume; as well as maximum pressures.	1	4,160 postings	4,160
458(b)	Record daily drilling fluid and materials inventory in drilling fluid report.	0.5	29,200 records	14,600
459(a)(3)	Request exception to procedure for protecting negative pressure area.	Burden included under 1010–0114		
Subtotal			37,520 Responses.	22,920
Other Drilling Requirements				
460; 465; 449(j), (k); 456(j); plus various references in subparts A, D, E, F, H, P, and Q.	Submit revised plans (including but not limited to, plugback; final surface location, water depth, rotary Kelly bushing elevation; moving drill unit from wellbore w/o completing well, etc), well/drilling records, procedures, certifications that include any/all supporting documentation etc., and request for various approvals required in subpart D on BOEMRE Forms 0124 (Application for Permit to Modify) or 0125 (End of Operations Report) and supporting information.	17	Form 0124 4,141.	70,397
	$116 fee × 4,141 = $480,356			
		2	Form 0125 239	478
460	Submit plans and obtain approval to conduct well test; notify BOEMRE before test.	7	19 requests	133
461(a–b); 466(e); 468(a)	Record and submit well logs and surveys run in the wellbore and/or charts of well logging operations (including but not limited to, etc.	3	281 logs/surveys.	843
	Record and submit directional and vertical-well surveys	1	281 reports	281
	Record and submit velocity profiles and surveys	1	55 reports	55
	Record and submit core analyses	1	150 analyses	150
461(e)	Provide copy of well directional survey to affected leaseholder.	0.75	10 occasions	8
462(a)	Prepare and post well control drill plan for crew members	0.5	308 plans	154
462(c)	Record results of well-control drills	1	8,320 results	8,320
463(b)	Request field drilling rules be established, amended, or canceled.	2.5	3 requests	8
465(a)(1), 428, 449(j) & k(1), 456(j).	Obtain approval to revise your drilling plan or change major drilling equipment by submitting a revised Form 0123, Application for Permit to Drill and Form 0123S, Supplemental APD Information Sheet [no fee for Revised APDs].	35	381 submittals	13,335

Citation 30 CFR 250 Subpart D and NTL(s)	Reporting and recordkeeping requirement	Non-hour cost burdens*		
		Hour Burden	Average number of annual responses	Annual burden hours (rounded)
Subtotal			14,188 Responses.	94,162
	$480,356 Non-Hour Cost Burdens			
Applying for a Permit To Modify and Well Records				
466, 467	Retain drilling records for 90 days after drilling is complete; retain casing/liner pressure, diverter, and BOP records for 2 years; retain well completion/well workover until well is permanently plugged/abandoned or lease is assigned.	2.15	3,460 records	7,439
468(b); 465(b)(3)	In the GOM OCS Region, submit drilling activity reports weekly on Forms 0133 (Well Activity Report) and 0133S (Bore Hole Data) and supporting information.	1	Form 0133 4,160. Form 0133S 4,160.	4,160 4,160
468(c)	In the Pacific and Alaska OCS Regions during drilling operations, submit daily drilling reports. N/A in GOM.	1	14 wells × 365 days × 20% year = 1,022.	1,022
469	As specified by region, submit well records, paleontological interpretations or reports, service company reports, and other reports or records of operations.	1.5	308 submissions.	462
Subtotal			13,110 Responses.	17,243
Hydrogen Sulfide				
490(c), (d)	Submit request for reclassification of H_2S zone; notify BOEMRE if conditions change.	0.5	2 responses	1
490(f); also referenced in 418(d).	Submit contingency plans for operations in H_2S areas (16 drilling, 5 work-over, 6 production).	30	26 plans	780
490(g)	Post safety instructions; document training; retain records at facility where employee works; train on occasion and/or annual refresher (approx. 2/year).	4	26	104
490(h)(2)	Document and retain attendance for weekly H2S drills and monthly safety mtgs until operations completed or for 1 year for production facilities at nearest field office.	2	2,716	5,432
490(i)	Display warning signs—no burden as facilities would display warning signs and use other visual and audible systems.			0
490(j)(7–8)	Record H_2S detection and monitoring sensors during drilling testing and calibrations; make available upon request.	4	3,650 records	14,600
490(j)(12)	Propose alternatives to minimize or eliminate SO_2 hazards—submitted with contingency plans—burden covered under § 250.490(f).			0
490(j)(13)(vi)	Label breathing air bottles—no burden as supplier normally labels bottles; facilities would routinely label if not.			0
490(l)	Notify (phone) BOEMRE of unplanned H_2S releases (approx. 2/year).	Oral 0.2	52 calls	11
		Written 5	52 written reports.	260
490(o)(5)	Request approval to use drill pipe for well testing	2	2 requests	4
490(q)(1)	Seal and mark for the presence of H_2S cores to be transported—no burden as facilities would routinely mark transported cores.			0
490(q)(9)	Request approval to use gas containing H_2S for instrument gas.	2	2 requests	4
490(q)(12)	Analyze produced water disposed of for H_2S content and submit results to BOEMRE.	3	200 submittals	600
Subtotal			6,728 Responses.	21,792

Citation 30 CFR 250 Subpart D and NTL(s)	Reporting and recordkeeping requirement	Non-hour cost burdens*		
		Hour Burden	Average number of annual responses	Annual burden hours (rounded)
Miscellaneous				
400–490	General departure or alternative compliance requests not specifically covered elsewhere in subpart D.	2	22	44
NTL	Voluntary submit to USCG read only access to the EPIRB data for their moored drilling rig fleet before hurricane season.	.25	80	20
Subtotal			102 Responses	64
TOTAL BURDEN			87,857 Responses.	215,624
	$1,209,104 Non-Hour Cost Burdens			

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified two non-hour cost burdens for this collection. When respondents submit an Application for Permit to Drill (BOEMRE Form 0123), they submit a $1,959 fee for initial applications only (there is no fee for revisions); and when respondents submit an Application for Permit to Modify (BOEMRE Form 0124), they submit a $116 fee. Refer to the table in Section A.12 to see these specific fee breakdowns. We have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 15, 2011, we published a **Federal Register** notice (76 FR 21395) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 12, 2011.

Public Availability of Comments: 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.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: July 20, 2011.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–20558 Filed 8–11–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Gulf of Mexico (GOM), Outer Continental Shelf (OCS), Western Planning Area (WPA), Oil and Gas Lease Sale for the 2007–2012 5-Year OCS Program

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of Availability (NOA) of a Final Supplemental Environmental Impact Statement (EIS).

Authority: This NOA is published pursuant to the regulations (40 CFR 1503) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)).

SUMMARY: BOEMRE has prepared a Final Supplemental EIS on an oil and gas lease sale tentatively scheduled late in 2011 for WPA Lease Sale 218, which is the final WPA lease sale in the 2007–2012 5-Year OCS Program. The proposed sale is in the Gulf of Mexico's WPA off the States of Texas and Louisiana. This Final Supplemental EIS updated the environmental and socioeconomic analyses for WPA Lease Sale 218, originally evaluated in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2007–2012; WPA Sales 204, 207, 210, 215, and 218; Central Planning Area (CPA) Sales 205, 206, 208, 213, 216, and 222, Final EIS (OCS EIS/EA

MMS 2007–018) (Multisale EIS), completed in April 2007. This Final Supplemental EIS also updated the environmental and socioeconomic analyses for WPA Lease Sale 218 in the GOM OCS Oil and Gas Lease Sales: 2009–2012; CPA Sales 208, 213, 216, and 222; WPA Sales 210, 215, and 218; Final Supplemental EIS (OCS EIS/EA MMS 2008–041) (2009–2012 Supplemental EIS), completed in September 2008.

SUPPLEMENTARY INFORMATION: BOEMRE developed the Final Supplemental EIS for WPA Lease Sale 218 in order to consider new circumstances and information arising from, among other things, the *Deepwater Horizon* event and spill. This Final Supplemental EIS provides updates on the baseline conditions and potential environmental effects of oil and natural gas leasing, exploration, development, and production in the WPA. BOEMRE conducted an extensive search for new information made available since completion of the Multisale EIS and the 2009–2012 Supplemental EIS and in consideration of the *Deepwater Horizon* event, including scientific journals; interviews with personnel from academic institutions and Federal, State, and local agencies; and available scientific data and information from academic institutions and Federal, State, and local agencies. BOEMRE has reexamined potential impacts of routine activities and accidental events, including a possible large-scale event, associated with the proposed WPA lease sale and the proposed lease sale's incremental contribution to the cumulative impacts on environmental and socioeconomic resources. Like the Multisale EIS and the 2009–2012 Supplemental EIS, the oil and gas resource estimates and scenario information for this Final Supplemental EIS are presented as ranges that would likely be involved as a result of this proposed lease sale.

Final Supplemental EIS Availability: To obtain a single printed or CD–ROM copy of the Final Supplemental EIS for WPA Lease Sale 218, you may contact the BOEMRE, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). An electronic copy of the Final Supplemental EIS (as well as links to the Multisale EIS and the 2009–2012 Supplemental EIS) is available at BOEMRE's Internet Web site at *http://www.gomr.boemre.gov/homepg/regulate/environ/nepa/nepaprocess.html.* The CD–ROM version of the Final Supplemental EIS also contains copies of the Multisale EIS and the 2009–2012 Supplemental EIS. Several libraries along the Gulf Coast have been sent copies of the Final Supplemental EIS. To find out which libraries, and their locations, have copies of the Final Supplemental EIS for review, you may contact BOEMRE's Public Information Office or visit BOEMRE's Internet Web site at *http://www.gomr.boemre.gov/homepg/regulate/environ/libraries.html.*

Comments: Federal, State, and local government agencies and other interested parties are requested to send their written comments on the Final Supplemental EIS in one of the following two ways:

1. In written form enclosed in an envelope labeled ''Comments on the WPA Lease Sale 218 Final Supplemental EIS'' and mailed (or hand carried) to Gary D. Goeke, Chief, Environmental Assessment Section, Leasing and Environment (MS 5410), Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the BOEMRE e-mail address: *WPASupplementalEIS@boemre.gov.* Comments should be submitted no later than 30 days from the publication of this NOA.

FOR FURTHER INFORMATION CONTACT: For more information on the Final Supplemental EIS, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (MS 5410), New Orleans, Louisiana 70123–2394, or by e-mail at *WPASupplementalEIS@boemre.gov.* You may also contact Mr. Goeke by telephone at (504) 736–3233.

Dated: July 18, 2011.

Robert P. LaBelle,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2011–20559 Filed 8–11–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2011–N160; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before September 12, 2011.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**.

Permit Applications

Permit Application Number: TE48832A.

Applicant: Kevin J. Roe, Iowa State University, Ames, IA.

The applicant requests a permit to take (capture and release; non-destructive sampling) scaleshell mussel (*Leptodea leptodon)* and pink mucket (*Lampsilis abrupta)* in Alabama, Arkansas, Kentucky, Missouri, Oklahoma, Tennessee, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild through scientific study.

Permit Application Number: TE182436.

Applicant: Illinois Natural History Survey, Champaign, IL.

The applicant requests an amendment to permit number TE182436 to take (capture and release; capture and kill) Indiana bats (*Myotis sodalis*) throughout the State of Illinois. Proposed activities are to monitor and evaluate the

population to enhance the recovery and survival of the species in the wild. Proposed lethal take activities are associated with scientific research of white-nose syndrome in the Indiana bat and its habitats.

Permit Application Number: TE48833A.

Applicant: Dr. Brian Carver, Tennessee Tech University, Cookeville, TN.

The applicant requests a permit to take (capture and release) Indiana bats and gray bats (*Myotis grisescens*) in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Missouri, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE38856A.

Applicant: Applicant: Skelly and Loy, Inc., Harrisburg, PA.

The applicant requests a permit amendment to add the gray bat to the list of covered species on their Federal permit. Proposed take (capture and release) may occur throughout the range of the species within Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, Connecticut, Maryland, New Jersey, New York, Pennsylvania, Vermont, Virginia, and West Virginia. The proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE212427.

Applicant: Ecology and Environment, Inc., Lancaster, NY.

The applicant requests a permit amendment to add the Virginia Big-Eared Bat (*Corynorhinus townsendii virginianus*) to the list of species covered under their permit. Proposed activities include surveys, population monitoring, and habitat evaluation for enhancement of survival of the species in the wild.

Permit Application Number: TE48835A.

Applicant: Applied Science & Technology, Inc., Brighton, MI.

The applicant requests a permit to take (capture and release) Northern riffleshell mussel (*Epioblasma torulosa rangiana)* within the State of Michigan. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE206781.

Applicant: Ecological Specialists, Inc., O'Fallon, MO.

The applicant requests an amendment to permit number TE206781 to add the following mussel species to the permit: Ouachita rock pocketbook (*Arkansia wheeleri*), Speckled pocketbook (*Lampsilis streckeri),* Dwarf wedgemussel (*Alasmidonta heterodon*), rough pigtoe (*Pleurobema plenum*), and ring pink (*Obovaria retusa*). Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE35503A.

Applicants: Department of Natural Resources/Department of Conservation, States of Illinois, Indiana, Iowa, Michigan, Missouri, Ohio and Wisconsin.

In anticipation of the spread of white-nose syndrome and the possible issuance of permits under section 10(a)(1)(A), we announce the intention to issue such permits, including the possible use of lethal taking to address public health concerns and scientific research aimed at recovery of the species. These permits will address take of Indiana bats and gray bats in the Midwest for these purposes.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: August 5, 2011.

Sean Marsan,

Acting Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2011–20598 Filed 8–11–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N121; 1265–0000–10137–S3]

Willapa National Wildlife Refuge, Pacific County, WA; Final Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan and environmental impact statement (Final CCP/EIS) for the Willapa National Wildlife Refuge (Refuge). In this final CCP/EIS, we describe how we propose to manage this Refuge for the next 15 years.

DATES: We will sign a record of decision no sooner than 30 days after publication of this notice.

ADDRESSES: You may view or request a printed or CD–ROM copy of the Final CCP/EIS by any of the following methods.

Agency Web Site: Download a copy of the Final CCP/EIS at *http://www.fws.gov/willapa.*

E-mail: FW1PlanningComments@fws.gov. Include ''Willapa NWR Final CCP/EIS'' in the subject line of the message.

Mail: Charlie Stenvall, Project Leader, Willapa National Wildlife Refuge Complex, 3888 SR 101, Ilwaco, WA 98624.

In Person Viewing: Willapa National Wildlife Refuge Complex, 3888 SR 101, Ilwaco, WA 98624.

Local Libraries: The Final CCP/EIS is available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Charlie Stenvall, Project Leader, (360) 484–3482 (phone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we announce the availability of the Refuge's Final CCP/EIS. We started this process through a notice in the **Federal Register** (73 FR 19238; April 9, 2008). We announced

the availability of the Draft CCP/EIS and requested public comments on it through a notice of availability published in the **Federal Register** (76 FR 3922; January 21, 2011).

The Refuge was established in 1937 to protect migrating and wintering populations of brant, waterfowl, shorebirds, and other migratory birds, and for conservation purposes. The Refuge encompasses over 16,000 acres of tidelands, temperate rainforest, ocean beaches, sand dunes, rivers, and small streams. It also preserves several rare remnants of old growth coastal cedar forest, and habitat for spawning wild salmon, hundreds of thousands of migrating shorebirds, and threatened and endangered species such as the western snowy plover and marbled murrelet.

We announce the availability of the Final CCP/EIS in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of potential impacts on the human environment in the Final CCP/EIS. The CCP will guide us in managing and administering the Refuge for the next 15 years.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives We Are Considering

We identified a number of issues in our Draft CCP/EIS and received a number of comments on the following Refuge management alternatives.

Under Alternative 1, there would be no changes to current Refuge management programs. We would continue to conduct current programs and operations based on Refuge funding and staffing levels. We would continue to maintain, and where feasible, restore, forest, wetland, and beach dune habitats, including habitats for imperiled species that are State or Federally listed as threatened or endangered. We would continue to implement the Refuge's forest management plan with our partners. Existing public uses—hunting, fishing, wildlife observation and photography, environmental education and interpretation, and camping—would continue.

Under Alternative 2, our preferred alternative, current wildlife and habitat management programs would be maintained. In addition, Alternative 2 contains the highest level of habitat improvements of the three alternatives. The intensively managed pastures and impoundments would be restored to historic estuarine conditions, increasing open water, intertidal flats, and salt marsh habitat by 621 acres. We would continue to implement the Refuge's forest management plan with our partners. On the Leadbetter Point Unit, a predator management program would be implemented, as necessary, to control avian and mammalian predators, and help meet western snowy plover recovery goals. On the Riekkola Unit, 93 acres of short-grass fields would be managed as foraging habitat for Canada geese, elk, and other grassland-dependent wildlife. Grassland restoration on 33 acres would include establishing the early-blue violet, a host plant that would serve the future reintroduction of the endangered Oregon silverspot butterfly. Managed freshwater wetlands would remain on the Tarlatt Unit. In Alternative 2, we proposed expanding the Refuge's approved boundary by 6,809 acres, in the Nemah, Naselle, South Bay, and East Hills areas. The Shoalwater and Wheaton Units (941 acres) would be divested from the Refuge.

Improvements to the wildlife-dependent public use program under Alternative 2 would include a new interpretive trail and wildlife observation deck along the South Bay. The new trail would tie into our proposed Tarlatt Unit visitor/administrative facility. We would expand the area where waterfowl hunting is conducted (in accordance with the State's season), to include approximately 5,570 acres, after the proposed estuarine restoration is completed. An additional 100 acres would be available for goose hunting. We would provide three blinds for goose hunting, and two blinds for waterfowl hunting. Walk-in hunters would have access to the blinds on a first-come, first-served basis. We would develop a cartop boat launch to access the South Bay. A special permit elk hunt is proposed for the Leadbetter Point Unit, and we would also expand elk and deer hunting in the South Bay and East Hills Units, in accordance with State seasons.

Under Alternative 3, the Refuge's intensively managed pastures and impoundments would be restored to historic estuarine conditions, creating and maintaining approximately 878 acres of open water habitat and 4,178 acres of intertidal flats, and increasing salt marsh habitat by 429 acres. The proposed estuarine restoration project would occur on the Lewis and Porter Point Units only. On the Leadbetter Point Unit, predator management would be implemented as necessary, to control avian predators and help meet western snowy plover recovery goals. We would continue to implement the Refuge's forest management plan, with partners. We would restore grassland habitat and establish the early-blue violet host plant on 33 acres, to serve the future reintroduction of the endangered Oregon silverspot butterfly. Managed freshwater wetlands would remain on the Riekkola and Tarlatt Units. An expanded land acquisition boundary is proposed, to include 4,900 acres located in the South Bay and East Hills areas. The Shoalwater and Wheaton Units would be divested from the Refuge.

Improvements to the wildlife-dependent public use program would include a new interpretive trail and wildlife observation deck along the South Bay that would tie into our proposed Tarlatt Unit visitor/administrative facility. After the proposed estuarine restoration is completed, the area where waterfowl hunting is conducted (in accordance with the State's season) would expand to include approximately 5,440 acres. In addition, we would provide seven blinds for walk-in goose hunting, available to hunters through a lottery system. We would expand hunting opportunities at the Leadbetter Point Unit, to include a permit-only regulated elk hunt. We would also provide elk and deer hunting opportunities in the South Bay Unit, in accordance with State seasons.

Comments

We initially solicited public comments on the Draft CCP/EIS for 45 days, from January 21 to March 7, 2011

(76 FR 3922), then extended the comment period to March 21, 2011, in response to public requests for more review time. We received comments on the Draft CCP/EIS from 213 individuals, agencies, and groups. We addressed the comments in the Final CCP/EIS, primarily by changing parts of Alternative 2, our preferred alternative. The changes we made to Alternative 2 follow.

• On the South Bay Units, we would restore 621 acres of historic estuarine habitats (open water, intertidal flats, and salt marsh), instead of the 749 acres previously identified in the Draft CCP/EIS, restoring only parts of the units' estuarine habitat. Also on the Riekkola Unit, instead of removing all of the short grass fields, we would manage 93 acres of short-grass fields for Canada geese and Roosevelt elk.

• Instead of removing all goose hunting blinds from the Riekkola Unit, we would maintain three goose hunting blinds, including a barrier-free blind, and add two waterfowl hunting blinds, including a barrier free blind, to the unit. Walk-in access to the blinds for hunting would be provided in accordance with State hunting regulations. During the nonhunting season, all Refuge visitors could use the blinds.

• In addition to previously proposed opportunities for wildlife observation, photography, and interpretive trails; the parking area, cartop boat launch, and a new trail to Porter Point would be open year round to all Refuge visitors.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view our Final CCP/EIS at the following libraries.

• Ilwaco Timberland Library, 158 1st Ave. North, Ilwaco, WA 98624.

• South Bend Timberland Library, West 1st and Pacific, South Bend, WA 98586.

• Ocean Park Timberland Library, 1308 256th Place, Ocean Park, WA 98640.

• Astoria Public Library, 450 10th St., Astoria, OR 97103.

Dated: June 23, 2011.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–19838 Filed 8–11–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL00000.L51010000.ER0000. LVRWF09F3450 241A; N–78803; 11–08807; MO#4500020763; TAS: 14X5017]

Notice of Extension of Public Comment Period for the Draft Environmental Impact Statement, Including a Draft Programmatic Agreement, for the Clark, Lincoln, and White Pine Counties Groundwater Development Project, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Extension.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period for thirty (30) days on the Draft Environmental Impact Statement (EIS), including a Draft Programmatic Agreement, for the Southern Nevada Water Authority's (SNWA) proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project. A notice published in the **Federal Register** on June 10, 2011 (76 FR 34097), provided for a 90-day public comment period ending on September 8, 2011.

DATES: Public comments on the Draft EIS and Draft Programmatic Agreement will now be accepted through October 11, 2011. Comments received or postmarked after October 11, 2011, will be considered to the extent practicable.

ADDRESSES: You may submit comments related to the Draft EIS or Draft Programmatic Agreement for the SNWA Project by any of the following methods:

• *E-mail: nvgwprojects@blm.gov.*

• *Fax:* (775) 861–6689.

• *Mail:* SNWA Project, Bureau of Land Management, *Attn:* Penny Woods, P.O. Box 12000, Reno Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Penny Woods, Project Manager, telephone (775) 861–6466; address P.O. Box 12000, Reno, Nevada 89520; e-mail *penny_woods@blm.gov.* You also may visit the project Web site at *http://www.blm.gov/5w5c.*

SUPPLEMENTARY INFORMATION: The BLM received numerous requests from individuals and organizations to extend the comment period on the Draft EIS and Draft Programmatic Agreement. In response to those requests, the BLM is extending the public comment and review period 30 days, through October 11, 2011.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Amy Lueders,

BLM Nevada Acting State Director.

[FR Doc. 2011–20490 Filed 8–11–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0006]

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in this ICR titled ''30 CFR Part 1220, OCS Net Profit Share Payment Reporting.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments on or before September 12, 2011.

ADDRESSES: Submit written comments by either FAX (202) 395–5806 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for the Department of the Interior (OMB Control Number 1012–0009).

Please also submit a copy of your comments by one of the following methods:

• Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ONRR–2011–0006, and then click search. Follow the instructions to submit public comments. The ONRR will post all comments.

• Mail comments to Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61013C, Denver, Colorado 80225–0165. Please reference ICR 1012–0009 in your comments.

• Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1012–0009 in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Mary Ann Guilinger, Audit and Compliance Management (ACM), ONRR, telephone (303) 231–3408, or e-mail *maryann.guilinger@onrr.gov.* For other questions, contact Armand Southall, telephone (303) 231–3221, or e-mail *armand.southall@onrr.gov.* You may also contact Mr. Southall to obtain copies, at no cost, of (1) the ICR and (2) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR Part 1220, OCS Net Profit Share Payment Reporting.

OMB Control Number: 1012–0009.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands and the OCS, collect royalties due, and distribute the funds collected under those laws. The ONRR performs the royalty management functions for the Secretary.

Public laws pertaining to mineral leases on Federal and Indian lands and the OCS are posted at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm.*

I. General Information

The ONRR collects and uses this information to determine all allowable direct and allocable joint costs and credits under § 1220.011 incurred during the lease term, appropriate overhead allowance permitted on these costs under § 1220.012, and allowances for capital recovery calculated under § 1220.020. The ONRR also collects this information to ensure royalties or net profit share payments are accurately valued and appropriately paid. This ICR affects only oil and gas leases on submerged Federal lands on the OCS.

II. Information Collections

Title 30 CFR part 1220 covers the net profit share lease (NPSL) program and establishes reporting requirements for determining the net profit share base under § 1220.021 and calculating net profit share payments due the Federal Government for the production of oil and gas from leases under § 1220.022.

A. NPSL Bidding System

To encourage exploration and development of oil and gas leases on submerged Federal lands on the Outer Continental Shelf (OCS), the Bureau of Ocean Energy Management, Regulations, and Enforcement (BOEMRE, the former Offshore Energy and Minerals Management [OEMM] of Minerals Management Service [MMS]) promulgated regulations at 30 CFR part 260—Outer Continental Shelf Oil and Gas Leasing. Also, BOEMRE promulgated specific implementing regulations for the NPSL bidding system at § 260.110(d). The BOEMRE established the NPSL bidding system to balance a fair market return to the Federal Government for the lease of its public lands with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development and provides for sharing the risks by the lessee and the Federal Government. The NPSL bidding system incorporates a fixed capital recovery system as a means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

B. NPSL Capital Account

The Federal Government does not receive a profit share payment from an NPSL until the lessee shows a credit balance in its capital account; that is, cumulative revenues and other credits exceed cumulative costs. Lessees multiply the credit balance by the net profit share rate (30 to 50 percent), resulting in the amount of net profit share payment due the Federal Government.

The ONRR requires lessees to maintain an NPSL capital account for each lease under § 1220.010, which transfers to a new owner when sold. Following the cessation of production, lessees are also required to provide either an annual or a monthly report to the Federal Government, using data from the capital account until the lease is terminated, expired, or relinquished.

C. NPSL Inventories

The NPSL lessees must notify ONRR of their intent to perform an inventory and file a report after each inventory of controllable materiel under § 1220.032.

D. NPSL Audits

When non-operators of an NPSL call for an audit, they must notify ONRR. When ONRR calls for an audit, the lessee must notify all non-operators on the lease. These requirements are located at § 1220.033.

III. OMB Approval

The information we collect under this ICR is essential in order to determine when net profit share payments are due and to ensure lessees properly value and pay royalties or net profit share payments.

We are requesting OMB approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm the accurate royalty value. Proprietary information submitted to ONRR under this collection is protected, and no items of a sensitive nature are included in this information collection.

Frequency: Annually, monthly, and on occasion.

Estimated Number and Description of Respondents: 6 lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,046 hours.

All six lessees report monthly because all current NPSLs are in producing status. Because the requirements for establishment of capital accounts at § 1220.010(a) and capital account annual reporting at § 1220.031(a) are necessary only during non-producing status of a lease, we included only one response annually for these requirements, in case a new NPSL is established. We have not included in our estimates certain requirements performed in the normal course of business, which are considered usual and customary. The following table shows the estimated annual burden hours by CFR section and paragraph.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 1220	Reporting & recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
Part 1220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases				
§ 1220.010 NPSL capital account				
1220.010(a)	(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations * * *.	1	1	1
§ 1220.030 Maintenance of records				
1220.030(a) and (b)	(a) Each lessee * * * shall establish and maintain such records as are necessary * * *.	1	6	6
§ 1220.031 Reporting and payment requirements				
1220.031(a)	(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account * * *.	1	1	1
1220.031(b)	(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee * * * shall file a report for each NPSL, not later than 60 days following the end of each month * * *.	13	72 [1]	936
1220.031(c)	(c) Each lessee subject to this Part 220 shall submit, together with the report required * * * any net profit share payment due * * *.	Burden hours covered under § 1220.031(b).		
1220.031(d)	(d) Each lessee * * * shall file a report not later than 90 days after each inventory is taken * * *.	8	6	48
1220.031(e)	(e) Each lessee * * * shall file a final report, not later than 60 days following the cessation of production * * *.	4	6	24
§ 1220.032 Inventories				
1220.032(b)	(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory * * *.	1	6	6
§ 1220.033 Audits				
1220.033(b)(1)	(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call * * *.	2	6	12
1220.033(b)(2)	(b)(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit * * * The lessee shall send copies of the notice to the nonoperators on the lease * * *.	2	6	12
1220.033(e)	(e) Records required to be kept under § 1220.030(a) shall be made available for inspection by any authorized agent of DOI * * *.	The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.		
TOTAL BURDEN			110	1,046

[1] (6 NPSL reports × 12 months = 72 reports)

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour cost'' burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on March 25, 2011 (76 FR 16816), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 12, 2011.

Public Comment Policy: We post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

ONRR Information Collection Clearance Officer: Hyla Hurst (303) 231–3495.

Dated: August 2, 2011.

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2011–20510 Filed 8–11–11; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Third Review)]

Gray Portland Cement and Cement Clinker From Japan; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Gray Portland Cement and Cement Clinker From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* August 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 5, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 24519, May 2, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate.[1] The Commission did not find any other circumstances that would warrant conducting a full review.[2] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on September 12, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 3, 2011 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 3, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain

[1] Commissioner Dean A. Pinkert did not participate.

[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[3] The Commission has found the responses submitted by the Committee For Fairly Traded Japanese Cement; the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; the International Union of Operating Engineers; and Local Lodge 93, International Association of Machinists and Aerospace Workers to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 9, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–20544 Filed 8–11–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–797]

Certain Portable Electronic Devices and Related Software; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 8, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Apple Inc., f/k/a Apple Computer, Inc. of Cupertino, California. A supplement was filed on August 3, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable electronic devices and related software by reason of infringement of certain claims of U.S. Patent No. 7,844,915 (''the '915 patent''); U.S. Patent No. 7,469,381 (''the '381 patent''); U.S. Patent No. 7,084,859 (''the '859 patent''); U.S. Patent No. 7,920,129 (''the '129 patent''); and U.S. Patent No. 6,956,564 (''the '564 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 5, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable electronic devices and related software that infringe one or more of claims 1–5, 7–12, 14–19, and 21 of the '915 patent; claims 1–20 of the '381 patent; claims 14–20, 25, and 28 of the '859 patent; claims 1–3, 5–12, 14–19, 21, 22, and 24–28 of the '129 patent; and claims 28 and 36 of the '564 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Apple Inc., f/k/a Apple Computer, Inc.,
1 Infinite Loop,
Cupertino, CA 95014.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

HTC Corp.,
23 Xinghua Road, Taoyuan 330,
Taiwan.

HTC America, Inc.,
13920 SE. Eastgate Way, Suite 400,
Bellevue, WA 98005.

Exedea, Inc.,
5950 Corporate Drive,
Houston, TX 77036.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Acting Chief Administrative Law Judge Charles E. Bullock, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 8, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–20467 Filed 8–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Notice is hereby given that on August 3, 2011, a proposed Consent Decree in *United States and Commonwealth of Massachusetts* v. *BIM Investment Corp. et al.,* Civil Action No. 1:11-cv-11382 was lodged with the United States District Court for the District of Massachusetts.

The Consent Decree resolves claims brought by the United States, on behalf of the United States Department of the Interior (''DOI''), acting through the United States Fish and Wildlife Service, and the Commonwealth of Massachusetts (''Commonwealth''), on behalf of the Secretary of Energy and Environmental Affairs (''EEA''), against four parties (''Settling Defendants'') under Section 107 of CERCLA, 42 U.S.C. 9607. In their respective complaints, filed concurrently with the Consent Decree, the United States and the Commonwealth sought damages in order to compensate for and restore natural resources injured by the release or threatened release of hazardous substances at or from the Blackburn and Union Privileges Superfund Site in Walpole, Massachusetts (the ''Site''), along with the recovery of costs incurred in assessing such damages.

Under the Consent Decree, Settling Defendants Tyco Healthcare Group LP, W.R. Grace & Co.-Conn., BIM Investment Corporation, and Shaffer Realty Nominee Trust will pay $1,000,000 for natural resource damages restoration projects to be conducted by DOI and EEA. The Consent Decree also requires the Settling Defendants to reimburse the United States and the Commonwealth for a combined $94,169.56 in assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Commonwealth of Massachusetts* v. *BIM Investment Corp. et al.,* D.J. Ref. No. 90–11–3–09667/1.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–20581 Filed 8–11–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Verifone Systems, Inc. and Hypercom Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Verifone Systems, Inc. and Hypercom Corporation,* Civil Action No. 1:11–cv–00887. On June 27, 2011, the United States filed an Amended Complaint alleging that the proposed acquisition by Verifone Systems, Inc. of the business assets of Hypercom Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on August 4, 2011, requires the Defendants to divest Hypercom's U.S. business, along with certain tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (*telephone:* 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks and Technology Enforcement Section, Antitrust Division, Department of Justice, Washington, DC 20530 (*telephone:* 202–307–6200).

Patricia A. Brink,

Director of Civil Enforcement.

In the United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, Plaintiff, v. *Verifone Systems, Inc., 2099 Gateway Place, Suite 600, San Jose, CA 95110, and Hypercom Corporation, 8888 East Raintree Drive, Suite 300, Scottsdale, AZ 85260,* Defendants.

Case: 1:11–cv–00887.
Assigned to: Kessler, Gladys.
Assign. Date: 5/12/2011.
Description: Antitrust.

Amended Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action against VeriFone Systems Inc. (''VeriFone''), and Hypercom Corporation (''Hypercom'') pursuant to the antitrust laws of the United States to enjoin VeriFone's proposed acquisition of Hypercom, and to obtain such other equitable relief as the Court deems appropriate. The United States alleges as follows:

I. Nature of Action

1. Point of sale (''POS'') terminals enable retailers and other firms to accept a wide range of non-cash payment types, such as credit cards and debit cards, at millions of locations nationwide. Given the increasing popularity of electronic payments, the vast majority of merchants need to accept such cards and use POS terminals to handle billions of dollars of on-site electronic payments daily. This complaint seeks to enjoin Defendants

VeriFone and Hypercom from proceeding with a transaction that, if permitted, would eliminate nearly all competition in the sale of POS terminals in the United States.

2. VeriFone and Hypercom are two of the three leading providers of POS terminals in the United States. If the Verifone-Hypercom transaction is not enjoined, Hypercom would cease to exist as an independent competitor in this concentrated market. The proposed transaction would result in VeriFone and the third leading provider of POS terminals in the United States, Ingenico, S.A. (''Ingenico''), becoming a duopoly in full control of the sale of POS devices in the United States.

3. POS terminals can operate on a standalone basis, connected to payment networks by a standard telephone line or by wired or wireless internet protocol technologies. POS terminals of this type are commonly referred to in the industry as ''countertop'' machines, and are typically used by small- or medium-sized businesses or retailers to enable them to accept credit and debit cards. POS terminals can also be connected to an electronic cash register or similar device as part of an integrated point of sale system. POS terminals of this type are often referred to in the industry as ''multi-lane'' or ''consumer-facing'' machines, and are typically used by large retailers to accept credit and debit cards. Each of these industry segments constitutes an antitrust market. The countertop POS terminals market and the multi-lane POS terminals market are the two relevant markets that would be affected by the proposed transaction challenged in this Complaint. The line of business including both relevant markets is referred to as the ''POS terminals industry.''

4. The POS terminals industry, both in the United States and on a worldwide basis, is extremely concentrated and dominated by VeriFone, Hypercom, and Ingenico. In 2009, according to a leading market analyst report, VeriFone had a 48 percent share of the sale of all POS terminals in the United States, while Hypercom had an 18 percent share and Ingenico had a 26 percent share.

5. Similarly, each of the relevant markets is extremely concentrated in the United States and there is little timely prospect of either of them becoming less concentrated. VeriFone and Hypercom together control over 60 percent of the countertop POS terminals market in the United States. VeriFone, Hypercom, and Ingenico together control well over 90 percent of the multi-lane POS terminals market in the United States. Their position in the relevant markets is also protected by the high barriers to entry that characterize these markets.

6. In November 2007, VeriFone's CEO, Douglas G. Bergeron, projected that the worldwide POS terminals industry was trending towards a ''very benevolent duopoly'' consisting solely of VeriFone and Ingenico. Bergeron's description of such a potential duopoly as ''very benevolent'' has led VeriFone to eschew robust and vibrant competition in favor of cooperation with, and benevolence toward, competitors. Consummation of the proposed transaction would achieve Mr. Bergeron's vision.

7. On November 17, 2010, following approximately eighteen months of negotiations, VeriFone agreed to purchase Hypercom in a $485 million deal that would combine two of only three significant sellers of POS terminals in the United States.

8. VeriFone's proposed acquisition of Hypercom would substantially extend VeriFone's position as the largest seller of all POS terminals in the United States. Ingenico would be the only remaining substantial competitor to VeriFone. Post-transaction, VeriFone and Ingenico together would dominate the multilane POS terminals market—the very duopoly envisioned by VeriFone's CEO four years ago. The acquisition would reduce competition in the relevant markets by eliminating Hypercom as an independent source of competitive discipline and by reducing impediments to successful coordination. This would inevitably lead to higher prices, inferior service, a reduction in the variety of products sold, and reduced innovation.

9. The United States requests that the Court enjoin VeriFone's acquisition of Hypercom to protect consumers throughout United States from the loss of competition in the provision of devices used to facilitate billions of retail transactions each year.

II. Defendants

10. VeriFone is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in San Jose, California. In the fiscal year ending October 31, 2010, VeriFone earned more than $1 billion in revenues worldwide.

11. Hypercom is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Alpharetta, Georgia. In 2010, Hypercom earned more than $450 million in revenues worldwide.

III. Jurisdiction, Venue, and Commerce

12. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4 to prevent and restrain Defendants from violating Section 1 of the Sherman Act, 15 U.S.C. 1, and pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

13. The Court has subject-matter jurisdiction over this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, Section 15 of the Clayton Act, as amended, and 28 U.S.C. 1345. The Court also has subject-matter jurisdiction pursuant to 28 U.S.C. 1331 and 1337(a), as Defendants sell POS terminals and/or other products and services in the United States, and sell products and services in the flow of interstate commerce. Defendants' products and services involve a substantial amount of interstate commerce. Sales of countertop POS terminals and multi-lane POS terminals each exceeded $150 million in the United States in 2010.

14. This Court has personal jurisdiction over each Defendant and venue is proper over VeriFone and Hypercom in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, because Defendants VeriFone and Hypercom both transact business and are found within this District.

IV. Adverse Competitive Effects

15. VeriFone's proposed acquisition of Hypercom would reduce competition in two antitrust markets: The sale of countertop POS terminals and the sale of multi-lane POS terminals. VeriFone and Hypercom are two of only three companies with substantial sales in the countertop POS terminals market; the third company with significant sales is First Data Corporation (''First Data''), which is vertically integrated and only sells devices to customers of its merchant processing services. VeriFone and Hypercom are two of the only three substantial competitors in the multi-lane POS terminals market; Ingenico is the third competitor in that market. The proposed acquisition would eliminate all competition between VeriFone and Hypercom, and would increase the likelihood of coordination in the POS terminals markets.

A. Relevant Product and Geographic Markets

1. Countertop POS Terminals Market

16. The sale of countertop POS terminals suitable for use in the United States is a relevant antitrust market for purposes of Section 1 of the Sherman Act and a relevant antitrust market and

line of commerce for purposes of Section 7 of the Clayton Act.

17. Other types of payment devices are not adequate substitutes for countertop POS terminals. Purchasers of countertop POS terminals would not switch to other types of payment systems in sufficient numbers to render unprofitable a price increase imposed by a hypothetical monopolist in the sale of countertop POS terminals suitable for use in the United States.

18. A hypothetical monopolist of countertop POS terminals suitable for use in the United States could profitably raise prices by at least a small but significant, non-transitory amount. Purchasers of countertop POS terminals located in the United States would not be able to switch to other products, including to countertop POS terminals made for non-U.S. markets, to defeat such a price increase by a hypothetical monopolist.

19. The relevant geographic market is the United States, where the customers for countertop POS terminals suitable for use in the United States are located. Countertop POS terminals suitable for use in the United States may be manufactured anywhere in the world.

20. Countertop POS terminals sold in other parts of the world will not work unmodified in the United States. Countertop POS terminals sold in the United States must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications and certification requirements.

2. Multi-lane POS Terminals Market

21. The sale of multi-lane POS terminals suitable for use in the United States is a relevant antitrust market for purposes of Section 1 of the Sherman Act and a relevant antitrust market and line of commerce for purposes of Section 7 of the Clayton Act.

22. Other types of payment devices are not adequate substitutes for multi-lane POS terminals. Purchasers of multi-lane POS terminals would not switch to other types of payment systems in sufficient numbers to render unprofitable a price increase imposed by a hypothetical monopolist in the sale of multi-lane POS terminals suitable for use in the United States.

23. A hypothetical monopolist of multi-lane POS terminals suitable for use in the United States could profitably raise prices by at least a small but significant, non-transitory amount. Purchasers of multi-lane POS terminals located in the United States would not be able to switch to other products, including to multi-lane POS terminals made for non-U.S. markets, to defeat such a price increase by a hypothetical monopolist.

24. The relevant geographic market is the United States, where the customers for multi-lane POS terminals suitable for use in the United States are located. Multi-lane POS terminals suitable for use in the United States may be manufactured anywhere in the world.

25. Multi-lane POS terminals sold in other parts of the world will not work unmodified in the United States. Multi-lane POS terminals sold in the United States must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications and certification requirements.

B. Market Concentration

26. VeriFone's proposed acquisition of Hypercom would increase market concentration in the POS terminals markets.

27. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (''HHI'') is a measure of market concentration.[1] Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the merger guidelines.

28. The countertop POS terminals market and the multi-lane POS terminals market are already highly concentrated, even before the effect of the proposed transaction is taken into account. VeriFone's proposed acquisition of Hypercom would result in a substantial increase in the HHI in both markets in excess of the 200 points presumed to be anticompetitive under the merger guidelines.

C. VeriFone's Proposed Acquisition of Hypercom Would Result in Competitive Harm

29. VeriFone's proposed acquisition of Hypercom would reduce competition in the relevant markets, leading to unilateral and coordinated effects such as an increase in prices and a reduction in innovation, quality, product variety, and service.

30. VeriFone's proposed acquisition of Hypercom would eliminate all competition between the two companies. VeriFone is the largest provider of both countertop and multi-lane POS terminals. Hypercom is one of only two other companies currently selling a significant number of countertop POS terminals and is the third-largest provider of multi-lane POS terminals. The competition between VeriFone and Hypercom is therefore especially important to consumers, and the elimination of that competition would substantially reduce the overall level of competition in each market.

31. The acquisition would result in unilateral effects in each relevant market as VeriFone would be able to raise the price of both VeriFone and Hypercom products because it would recapture some sales that would have been lost absent the acquisition as purchasers reacted to such price increases by switching between VeriFone and Hypercom products.

32. Eliminating competition between Verifone and Hypercom would also reduce the number of significant competitors from three to two in the POS terminals markets, resulting in the very ''duopoly'' projected by VeriFone's CEO and heightening the potential for coordinated behavior. Coordination, whether tacit or explicit, is especially likely because the acquisition would enhance each company's ability to deter competitive behavior in one market by retaliating across a range of other product and geographic markets, if necessary.

D. Absence of Countervailing Factors

1. Entry

33. Supply responses from competitors or potential competitors would not prevent the likely anticompetitive effects of the proposed transaction.

34. Industry participants have described the POS terminals industry as highly concentrated, with high barriers to entry. These entry barriers include the need to obtain certifications, keeping up with changing payment

[1] See U.S. Dep't of Justice, Horizontal Merger Guidelines § 5.3 (2010), available at *http://www.justice.gov/atr/public/guidelines/hmg-2010.html.* The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

regulations, having sufficient scale, being in close proximity to customers, and having a broad portfolio of customer applications. These factors are entry barriers for both the countertop and multi-lane POS terminals markets. Given these and other significant barriers to entry or expansion, entry or repositioning would not be likely, timely, or sufficient to prevent the anticompetitive effects that would result from the proposed transaction.

35. Hypercom's CEO, Philippe Tartavull, has emphasized the difficulty of entering the POS terminals industry, explaining that ''[s]maller regional manufacturers who enter the business find it difficult because a typical product cycle is often too long for them to support'' and they are ''limited in the number of products they can bring to market.'' When these factors are combined with the ''high costs of certifying new products,'' Tartavull concluded, ''it can be very difficult to enter a new market geography or market segment. It's not impossible, but it's not easy. Other companies have tried, but when all is said and done, there are two primary providers to the North American market, and Hypercom is one of them.''

36. The only firm to enter the U.S. market in recent years and achieve any non-trivial amount of sales is First Data, a leading provider of electronic payment networks and services. Despite being as well placed as any company to break into the countertop POS terminals market given its complementary lines of business and its position as the largest merchant acquirer, and despite the fact that it purchased a small provider of U.S. POS terminals, First Data's sales are limited entirely to customers using its own network and First Data therefore has a very minimal ability to further expand its presence in the countertop POS terminals market. Smaller merchant processors would have less incentive and ability than First Data to place their own terminals on their network simply as a result of their significantly smaller volume of sales. First Data has no significant presence in the multi-lane POS terminals market.

37. Even after First Data entered the market, VeriFone's CEO expressed the view that the overall POS terminals business was likely to continue to consolidate until it was controlled by a duopoly consisting solely of VeriFone and Ingenico. Hypercom's statements regarding the difficulty of entry that are quoted in paragraph 36 were also made after First Data's entry.

38. Ingenico, an otherwise significant competitor in the POS terminals markets around the world, has faced significant difficulty in entering and expanding in the countertop POS terminals market in the United States. Ingenico has itself explained to investors that the POS terminals industry is ''highly concentrated,'' has ''consolidated in recent years,'' and is characterized by ''high barriers to entry.'' Ingenico has detailed a number of these entry barriers, including the need to obtain certifications, the ''[c]onstant intensification of the Global Card Regulation over the last 10 years,'' and the importance of ''[s]cale,'' ''[p]roximity,'' and a ''[p]ortfolio of customer application[s].'' These barriers to entry have affected Ingenico's ability to expand in the countertop POS terminals market.

39. The countertop and multi-lane POS terminals markets are characterized by a number of common barriers to entry, including those identified above. Amongst the most significant other general entry barriers are the importance of reputation and a proven track record of success serving customers generally and certain types of customers in particular. Customers are reluctant to entrust their sales process to a company without the proven ability to operate in their type of environment, especially since service and software maintenance are critical factors in the decision-making process.

40. In addition, a new producer's countertop POS terminals must be certified to work with the various payment processors in order for the processor to be willing to fully support that producer's terminals. This certification is costly and time-consuming, and payment processors are unlikely to prioritize the terminals of a new company with no committed customers. Without this certification, it is very difficult for a producer to sell a significant number of countertop POS terminals.

41. In the multi-lane POS terminals market, new entrants face an additional entry barrier relating to the need to demonstrate that a terminal can interoperate with the electronic cash register and integrated payment system used by each potential customer. As there are a range of integrated systems on the market and their providers are again unlikely to spend significant effort to work with a fledgling company with no customer base, new entrants face an uphill challenge. Even if a new entrant has a device with features comparable to those of VeriFone, Hypercom, and Ingenico, at an attractive price point, the consumer may not even consider bids from the company if it cannot demonstrate that its terminal already works with the integrated system used by that consumer.

2. Efficiencies

42. The anticompetitive effects of the proposed transaction are not likely to be eliminated or sufficiently mitigated by any efficiencies that may be achieved by the proposed transaction.

V. Violation Alleged

43. The United States incorporates the allegations of paragraphs 1 through 42 above.

44. The proposed acquisition of Hypercom by VeriFone likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in that:

a. Actual and potential competition between VeriFone and Hypercom in the sale of countertop and multi-lane POS terminals in the United States would be eliminated; and

b. competition in the sale of countertop and multi-lane POS terminals in the United States likely would be lessened substantially.

VI. Relief Requested

45. The United States requests that:

a. The proposed acquisition of Hypercom by VeriFone be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. VeriFone and Hypercom be enjoined from carrying out the proposed acquisition of Hypercom by VeriFone or carrying out any other agreement, understanding, or plan by which VeriFone and Hypercom would acquire, be acquired by, or merge with each other, in whole or in part;

c. The United States be awarded their costs of this action; and

d. The United States receive such other and further relief as the case requires and the Court deems just and proper.

Dated: June 15, 2011.

Respectfully submitted,

For Plaintiff United States.

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Joseph F. Wayland,
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In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Verifone Systems, Inc.,* and *Hypercom Corporation,* Defendants.
Case: 1:11–cv–00887.
Assigned to: Kessler, Gladys.
Assign. Date: 5/12/2011.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On November 17, 2010, VeriFone Systems, Inc. (''VeriFone'') entered into a $485 million merger agreement to acquire Hypercom Corporation (''Hypercom'') that would combine two of only three significant sellers of Point of Sale (''POS'') terminals in the United States. On April 1, 2011, VeriFone and Hypercom entered into an agreement whereby Hypercom's United States POS business would be licensed to Ingenico S.A. (''Ingenico''), the only other substantial provider of POS terminals. The United States filed a civil antitrust Complaint on May 12, 2011, seeking to enjoin VeriFone's proposed acquisition of Hypercom and the related licensing agreement with Ingenico because the likely effect of the transactions would be to lessen competition substantially for POS terminals in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in less innovation and higher prices for POS terminals. On May 19, 2011, Defendants announced they would abandon the agreement to license certain Hypercom assets to Ingenico. Therefore, the United States filed an Amended Complaint on June 22, 2011 to dismiss Ingenico as a defendant in this matter

On August 4, 2011, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition in the United States. Under the proposed Final Judgment, which is explained more fully below, VeriFone and Hypercom are required to divest Hypercom's entire business engaged in the development, production, distribution, and sale of POS terminals in the United States (hereafter, the ''Divestiture Assets''). Under the terms of the Hold Separate, VeriFone and Hypercom will take certain steps to ensure that the Divestiture Assets are operated as a competitive independent, economically viable and ongoing business that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish and remedy violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The POS Terminal Industry

POS terminals enable retailers and other firms to accept a wide range of non-cash payment types, such as credit cards and debit cards, at millions of locations nationwide. Given the increasing popularity of electronic payments, the vast majority of merchants need to accept non-cash payment options and use POS terminals to handle on-site electronic payments. POS terminals can be operated as standalone machines, commonly referred to in the industry as ''countertop'' machines, or connected to an electronic cash register or similar device as part of an integrated point of sale system, commonly referred to in the industry as ''multi-lane'' machines.

Countertop POS terminals can be connected to payment networks by a standard telephone line, by wired or wireless Internet protocol technologies, or cellular networks. Countertop POS terminals are typically sold to small- or medium-sized businesses or retailers to enable them to accept credit and debit cards.

Multi-lane POS terminals are connected to an electronic cash register or similar device as part of an integrated point of sale system. POS terminals of this type are typically used by large retailers such as a multi-lane retail merchant or department store to accept credit and debit cards.

B. The Defendants and the Proposed Transaction

VeriFone, a Delaware corporation, is the leading seller of both countertop and multi-lane POS terminals in the United States. VeriFone offers POS terminals and related software designed for numerous applications, including financial, retail, petroleum, government, and healthcare. VeriFone markets dial-up, IP-enabled, and wireless POS terminals. In addition, VeriFone provides POS operating systems for its POS terminals. Merchants using VeriFone terminals vary in size and transaction volume from small, local businesses to national, multi-lane retail chains. In the fiscal year ending October 31, 2010, VeriFone earned more than $1 billion in revenues worldwide.

Hypercom, a Delaware corporation, is the third largest provider of POS terminals in the United States, with a large presence in the countertop POS terminals market and an emerging presence in the multi-lane POS terminals market. Its customers include financial institutions, electronic payment processors, transaction network operators, retailers, system integrators, independent sales organizations, and distributors. It also sells products to companies in the hospitality, transportation, healthcare, and restaurant industries. Hypercom's products include POS terminals and peripheral devices, including a range of PIN pads and keyboards, card readers, and payment controllers designed to permit the efficient integration of payment functionality in a variety of self-service environments, such as transportation ticketing, gasoline station pumps, parking machines, and general purpose kiosks. In 2010, Hypercom earned more than $450 million in revenues worldwide.

On November 17, 2010, following approximately eighteen months of negotiations, VeriFone agreed to purchase Hypercom in a $485 million deal that would combine two of only three significant sellers of POS terminals in the United States. The proposed acquisition would extend VeriFone's position as the largest seller of POS terminals in the United States. This transaction would substantially lessen competition in the market for POS terminals and is the subject of the Amended Complaint and proposed Final Judgment filed by the United States in this matter.

C. Relevant Markets

Antitrust law, including Section 7 of the Clayton Act, protects consumers from anticompetitive conduct, such as firm's acquisition of the ability to raise prices or reduce choice. Market definition assists antitrust analysis by focusing attention on those markets where competitive effects are likely to be felt. Well-defined markets encompass actors including both sellers and buyers whose conduct most strongly influences the nature and magnitude of competitive effects. To ensure that antitrust analysis takes account of a broad enough set of products to evaluate whether a transaction is likely to lead to a substantial lessening of competition, defining relevant markets in merger cases frequently begins by identifying a collection of products or set of services over which a hypothetical monopolist profitably could impose a small but significant and non-transitory increase in price.

Here, the United States's investigation revealed two distinct markets for POS terminals. The first market consists of countertop POS terminals, which are directly connected to credit card processors through a telephone line, Internet connection or cellular network. The second market consists of multi-lane POS terminals, which are integrated into a merchant's cash register and integrated point of sale system. There are no reasonable alternative payment devices to countertop or multi-lane POS terminals to which merchants could turn to defeat a price increase. Accordingly, both countertop and multi-lane POS terminals are relevant product markets.

Antitrust analysis must also consider the geographic dimensions of competition. Here, the relevant markets exist within the United States and are not affected by competition outside the United States. POS terminals sold in the United States must be customized for the demands of the United States purchaser and comply with distinct technical specifications and certifications unique to the United States. Therefore, the competitive dynamic for POS terminals market is distinctly different outside the United States.

D. Competitive Effects

The POS terminals industry in the United States is extremely concentrated, and would become substantially more so if VeriFone were to acquire Hypercom. VeriFone and Hypercom are two of only three dominant providers of POS terminals in the United States. In 2009, according to a leading market analyst report, VeriFone had a 48 percent share of the sale of all POS terminals in the United States, while Hypercom had an 18 percent share. The only other significant company to offer POS terminals in the United States is Ingenico, representing a 26 percent share of the sale of all POS terminals in the United States.

In the United States, VeriFone and Hypercom together control over 60 percent of the countertop POS terminals market. VeriFone, Hypercom and Ingenico together control well over 90 percent of the multi-lane POS terminals market in this country. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), the proposed transaction would substantially increase the HHI in each relevant market in excess of the 200 points presumed to be anticompetitive under the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission.

The vigorous competition between VeriFone and Hypercom in the development, distribution and sale of countertop and multi-lane POS terminals has benefitted customers through better prices and increased innovation, quality, product variety and service. The proposed transaction would eliminate this competition between VeriFone and Hypercom and likely result in unilateral and coordinated effects. The acquisition would likely result in unilateral effects in each relevant market as VeriFone would be able to raise the price of both VeriFone and Hypercom products because it would recapture some sales that would have been lost absent the acquisition as purchasers reacted to such price increases by switching between VeriFone and Hypercom products. The elimination of Hypercom as a competitor would also reduce the number of significant competitors from three to two in the POS terminals markets, resulting in a duopoly and heightening the potential for coordinated behavior. Coordination, whether tacit or explicit, is especially likely because the acquisition would enhance each company's ability to deter competitive behavior in one market by retaliating across a range of other product and geographic markets.

The POS terminals markets are protected by high barriers to entry. These barriers include the need to obtain certifications for countertop POS terminals or the ability for the multi-lane POS terminal to work with a merchant's integrated payment system, keeping up with changing payment regulations, having sufficient scale, being in close proximity to customers, having a broad portfolio of customer applications, and the need for a reputation for reliability.

As a result of these barriers to entry, entry or expansion by any other firms into the countertop or multi-lane POS terminals markets would not be timely, likely, or sufficient to prevent the anticompetitive effects that would result from the proposed transaction.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the likely anticompetitive effects of the acquisition in the development, production, distribution, and sale of POS Terminals in the United States by establishing a new, independent and economically viable competitor. The proposed Final Judgment requires defendants to divest Hypercom's entire business engaged in the development, production, distribution, and sale of POS Terminals in the United States. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets.

The proposed Final Judgment designates Gores as the company to which the divested assets must be sold.[2] The Final Judgment will enable Gores to become a new, independent, economically viable competitor in the sale of POS Terminals in the United States. In addition to defining the assets to be divested to Gores, the Final Judgment requires VeriFone to (1) license the intellectual property necessary to compete in the provision of POS Terminals in the United States to Gores; (2) provide access to Hypercom employees; and (3) provide transitional support to Gores.

The United States typically requires that ownership of intellectual property is divested to the acquirer and if required a license to the intellectual property is granted back to the seller.

[2] The Hold Separate requires that until the assets being divested are sold according to the terms of the Final Judgment, VeriFone and Hypercom must continue to operate their entire businesses as independent, ongoing, and economically viable businesses that are held entirely separate, distinct and apart. VeriFone and Hypercom shall not coordinate their production, marketing or terms of sales until the assets being divested are sold. It is necessary to keep Hypercom's entire business separate from VeriFone's business in the event the divested assets are not sold to Gores for any reason. If the assets are not sold to Gores, VeriFone and Hypercom will be unable to combine their operations, thus preserving Hypercom as an independent competitor in the POS Terminals markets.

The structure of the intellectual property transfer in this instance is unique due to the nature of the divestiture relative to the entire global market. VeriFone will retain ownership of Hypercom's international POS Terminals business which relies on similar, and in some instances the same, intellectual property rights relied upon in Hypercom's United States POS Terminals. Therefore, VeriFone retaining ownership of Hypercom's intellectual property and licensing those rights to Gores allows Gores to compete effectively in the United States and VeriFone to utilize the Hypercom intellectual property abroad.

The Final Judgment allows Gores access to Hypercom employees and prohibits VeriFone interfering with any negotiations by Gores to employ any current or former Hypercom employee who is responsible in any way for the design, production and sale of POS Terminals in the United States. It also requires VeriFone to waive any non-compete agreements for current and former Hypercom employees involved in the design, production or sale of POS Terminals in the United States. These provisions will provide Gores will access to the engineering and sales talent at Hypercom which will help to ensure that Gores can operate effectively as a standalone competitor to VeriFone.

Gores may require assistance in transitioning the databases, software, and technical support that relates to the divested assets and may require time to develop their own capabilities to manage these items on a ongoing bases. Therefore, the Final Judgment allows for Gores to enter into a transitional support agreement for up to one year after the sale of the divestiture assets. These transition services will enable Gores to compete effectively in providing POS Terminal in the United States. In addition, the Final Judgment forecloses VeriFone from taking any action to impede the operation of the transitional support services agreement.

Gores, a privately held acquisition and management company, is well suited to acquire the divestiture assets. Gores specializes in acquiring technology organizations and managing them for growth and profitability. In addition, it has experience in the POS Terminal industry. In 2001, Gores purchased VeriFone from Hewlett-Packard Company. Gores and another firm recapitalized VeriFone, focused the company on its POS Terminals products and services, and made VeriFone a profitable company. In 2005, VeriFone launched an initial public offering and became an independent company. Given Gores' financial resources, management expertise and POS Terminals industry knowledge, Gores is well positioned to successfully compete with the merged firm in the development, production, distribution, and sale of POS Terminals in the United States

In the event that Defendants do not accomplish the divestiture to Gores as prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the development, production, distribution, and sale of POS terminals in the United States.

IV. Remedies Applicable to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Applicable For Approval Or Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking preliminary and permanent injunctions against Defendants' transaction and proceeding to a full trial on the merits. The United States is satisfied, however, that the relief in the proposed Final Judgment will preserve competition in the markets for countertop and multi-lane POS Terminals. Thus, the proposed Final Judgment would protect competition as effectively as would any remedy available through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the

proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').[1]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United State*s v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *'within the reaches of the public interest.'* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC *Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

In addition, ''a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d. at 1459–60. Courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC *Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 *Cong. Rec.* 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf.* BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '').

court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated: August 4, 2011.
Respectfully submitted,
For Plaintiff, United States of America.
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In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Verifone Systems, Inc.*, and *Hypercom Corporation*, Defendants.

Case: 1:11–cv–00887.
Assigned to: Kessler, Gladys.
Assign. Date: 5/12/2011.
Description: Antitrust.

Proposed Final Judgment

Whereas, Plaintiff United States of America (''United States'') filed its Amended Complaint on June 22, 2011, the United States and Defendants VeriFone Systems, Inc. and Hypercom Corp., by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants, to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Amended Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Amended Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in the Final Judgment:

A. ''Acquirer'' means Gores or a buyer designated by a trustee to whom Defendants shall divest the Divestiture Assets.

B. ''Defendants'' means VeriFone and Hypercom, as defined below, and any successor or assign to all or substantially all of the business or assets of VeriFone or Hypercom involved in the provision of Point of Sale Terminals.

C. ''Divestiture Assets'' means Hypercom's entire business engaged in the development, production, distribution, and sale of POS Terminals in the United States, including, but not limited to:

1. All facilities used in the operation of Hypercom's United States POS Terminal business, including Hypercom's repair facility located in Delegacion Benito Juarex, Mexico.

2. All existing inventory of Hypercom's POS Terminal devices including parts.

3. All tangible assets used to operate the Divestiture Assets, including, but not limited to, all research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Assets, including supply agreements and current POS Terminal certifications; all customer lists, customer contracts, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Assets.

4. Irrevocable, exclusive, transferable, fully paid, royalty free, non-sub licensable license to all patents and other intangible assets related to the development, production, distribution, and sale of POS Terminals in the United States, including, but not limited to, all licenses and sublicenses, software and hardware intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the Divestiture Assets, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Divestiture Assets, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

5. In the event that a trustee is appointed, the trustee may, at the trustee's sole discretion, include any assets, including tangible assets as well as patents and other intangible assets that extend beyond the United States, if the trustee finds it necessary to enable the Acquirer to compete effectively in the POS Terminals Industry in the United States and accomplish the divestiture of Hypercom's POS Terminals business.

D. ''Gores'' means The Gores Group, LLC., with headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Hypercom'' means Defendant Hypercom Corp., a Delaware corporation, with headquarters in Scottsdale, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

F. ''Gores'' means The Gores Group, LLC., with headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Point of Sale (POS) Terminals'' means devices that enable retailers and other firms to accept a wide range of non-cash payment types, such as credit cards and debit cards. POS Terminals can operate on a standalone basis or be connected to an electronic cash register or similar device as part of an integrated point of sale system. Standalone POS Terminals are commonly referred to in the industry as ''countertop'' machines. Integrated POS Terminals are commonly referred to in the industry as ''multi-lane'' or ''customer facing.''

H. ''POS Terminals Industry'' means the market for POS Terminals including countertop and integrated POS Terminals.

I. ''Transaction'' means VeriFone's proposed merger with Hypercom.

J. ''VeriFone'' means Defendant VeriFone Systems, Inc., a Delaware corporation, headquartered in San Jose, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within twenty (20) calendar days after the Court signs the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets to Gores in a matter consistent with this Final Judgment.

B. Defendants will not interfere with any negotiations by the Acquirer in connection with the transfer of the Divestiture Assets to employ any Hypercom employee who is agreed to by the Acquirer and Defendants to be an employee to be transferred in connection with the divestiture of the Divestiture Assets or as specified by a trustee. Interference with respect to this paragraph includes, but is not limited to, enforcement of non-compete clauses and offers to increase salary or other benefits apart from those offered company-wide. In addition, for each employee who elects employment by the Acquirer in connection with the divestiture of the Divestiture Assets, Defendants shall vest all unvested pension and other equity rights of that employee and provide all benefits to which the employee would have been entitled if terminated without cause.

C. Defendants shall, as soon as possible, but within two business days after completion of the relevant event, notify the United States of: (1) The effective date of the Transaction and (2) the effective date of the sale of the Divestiture Assets to the Acquirer.

D. Defendants shall enter into a transitional support services agreement on customary and commercially reasonable terms and conditions for a period up to twelve (12) months from the execution date of the divestiture to enable the Acquirer to compete effectively in providing POS Terminals in the United States.

E. Defendants shall not take any action that will impede in any way the sales, operation, use or divestiture of the Divestiture Assets or the operation of the transitional support services agreement.

F. Unless the United States otherwise consents in writing to the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business, engaged in providing POS Terminals in the United States. The divestiture shall be:

1. Made to an Acquirer that, in the United States's sole judgment has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing in the business of providing POS Terminals; and

2. accomplished so as to satisfy the United States, in its sole discretion that none of the terms of the agreement between an Acquirer and Defendants give Defendants the ability to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee To Effect Divestiture

A. If Defendants have not divested the Divestiture Assets as specified in Section IV, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to divest the Divestiture Assets in a manner consistent with this Final Judgment.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section V.E of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants,

accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, including any information provided to the United States during its investigation of the Transaction related to the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement the trustee shall notify the United States and Defendants of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V.D of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section V shall not be consummated. Upon objection by defendants under Section V.D, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Proposed Final Judgment in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division (''DOJ''), including consultants

and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

[FR Doc. 2011–20534 Filed 8–11–11; 8:45 am]

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U.S DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Management of Technical Assistance for Selected Sites in NIC's ''Evidence-Based Decision Making in Local Criminal Justice Systems'' Project

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Community Services Division is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement with NIC for up to twelve months beginning in September 2011. Work under this cooperative agreement is part of larger NIC project, ''Evidence-Based Decision Making (EBDM) in Local Criminal Justice Systems.'' Work under this cooperative agreement will be coordinated with recipients of other awards providing services under Phase III of this project.

Specifically, under this cooperative agreement, the recipient will, (1) provide technical assistance to four Phase III ''Tier II'' sites that have already been identified, and (2) provide ad hoc technical assistance to other non-EBDM sites to be determined together with the NIC staff.

DATES: Application must be received by 4 p.m. (EDT) on Wednesday, August 24, 2011. Selection of the successful applicant and notification of review results to all applicants will be made by September 15, 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.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperativeagreements.* All technical or programmatic questions concerning this announcement should be directed to Lori Eville, Correctional Program Specialist, National Institute of Corrections, at *leville@bop.gov.* All questions and answers will be posted on the NIC Web site.

SUPPLEMENTARY INFORMATION:

Overview: The overall goal of the EBDM Initiative is to establish and test articulated linkages (information tools and protocols) between local criminal justice decisions and the application of human and organizational change principles (evidence-based practices) to achieve measurable reduction of pretrial misconduct and post-conviction risk or re-offending. The unique focus of the initiative is the locally developed strategies of criminal justice officials that guide practice within existing sentencing statutes and rules. The initiative intends to: (1) improve the quality of information that leads to making individual case decisions in local systems; and (2) engage these systems as policy making bodies to collectively improve the effectiveness and capacity of the decision process related to pretrial release/sentencing

options. Local officials include judges, prosecutors, public defenders, police, human service providers, county executives, and jail, probation and pretrial services agencies' administrators.

Local criminal justice decisions are defined broadly to include dispositions regarding to arrest, cite and release or to custody; pretrial release or detention and setting of bail and pretrial release conditions; pretrial diversion; charging and plea bargaining; sentencing of adjudicated offenders regarding use of community and custody options; and responses to violations of conditions of pretrial release and community sentences.

Background: In June 2008, the National Institute of Corrections (NIC) launched a multiple phase initiative and awarded a cooperative agreement to address ''Evidence-Based Decision Making in Local Criminal Justice Systems.'' The goal of Phase I of the initiative was to build a system wide framework (arrest through final disposition and discharge) that will result in more collaborative, evidence-based decisionmaking and practices in local criminal justice systems. This effort is grounded in two decades of research on the factors that contribute to criminal reoffending and the methods the justice system can employ to interrupt the cycle of re-offense. The initiative seeks to equip criminal justice policymakers in local communities with the information, processes, and tools that will result in measurable reductions of pretrial misconduct and post-conviction reoffending.

The principle product of Phase I of this initiative was the Evidence-Based Decision Making Framework in Local Criminal Justice Systems. The Framework identifies the key structural elements of a system informed by evidence-based practice. It defines a vision of safer communities. It puts forward the belief that risk and harm reduction are fundamental goals of the justice system, and that these can be achieved without sacrificing offender accountability or other important justice system outcomes.

The Framework both acknowledged the importance of the key premises and values underlying our criminal justice system and provides a set of principles to guide evidence-based decisionmaking within that context. The principles themselves are evidence-based. The Framework also highlights some of the most groundbreaking research that demonstrates that pretrial misconduct and offender recidivism can be reduced. It identifies the key stakeholders who must be actively engaged in a collaborative partnership if an evidence-based system of justice is to be achieved. It outlines some of the most difficult challenges agencies face as they seek to deliberately and systematically implement such an approach in their local communities. A copy of the Evidence-Based Decision Making Framework document can be downloaded online at *http://www.cepp.com/ebdm.*

In August 2010, NIC launched Phase II (Planning and Engagement Stage) of the Evidence-Based Decision Making in Local Criminal Justice Systems Initiative by selecting seven jurisdictions to serve as EBDM ''Seed Sites.'' Those sites are: Mesa County, Colorado; Grant County, Indiana; Ramsey County, Minnesota; Yamhill County, Oregon; City of Charlottesville/County of Albemarle, Virginia; Eau Claire County, Wisconsin; Milwaukee County, Wisconsin.

The cooperative agreement awardees of Phase II provided intensive technical assistance to each of the 7 seed sites for a period of 10 months. The overarching purpose of the technical assistance was to: (1) Develop a shared philosophy and vision for the local criminal justice system; (2) Determine the capacity to collect and analyze date, including the quality of the date, to support ongoing analysis of the effectiveness of current and future policies, practices, and services designed to achieve specific risk and harm reduction outcomes; and (3) Change in knowledge, skills, and abilities regarding research-based risk reduction strategies.

Each site was provided technical assistance that was specific to the initiative and that was individualized to their system's needs. Monthly site visits from an assigned Technical Assistance Site Coordinator lead the jurisdictions through the attainment of specific activities and goals. The Roadmap to Phase II outlines the major objectives that the technical assistance providers guided the seeds sites to achieve. The technical assistance is intended to lead to the following outcomes: Build a genuine, collaborative policy team; Build individual agencies that are collaborative and in a state of readiness for change; Understand current practice within each agency/across the system; Understand and have the capacity to implement evidence-based practices; Establish performance measurements/outcomes/system scorecard; Develop system logic model; Engage/gain support of the community; Develop Strategic Action Plan.

Phase II is designed to be completed by September 2011. Each jurisdiction submitted an application for acceptance into Phase III of the initiative. Within their applications are a detailed strategic action plan and their system's logic model. The action plan and logic model will be the foundation of implementation activities of the Phase III technical assistance. Numerous factors regarding the sites performance were evaluated and reviewed by a panel to make the recommendations of which jurisdictions are best positioned to implement their action plans to reach their harm reduction goals.

Although there will only be three jurisdictions selected to move to Phase III, Tier I of the EBDM initiative, receiving the most intensive technical assistance, NIC is interested in continuing to provide technical assistance and training to assist the remaining four Tier II jurisdictions toward the implementation of their action plan and system logic model.

Scope of Work: There are two (2) project tasks and deliverables required under this this cooperative agreement:

(1) Technical Assistance will be provided to four Tier II EBDM seed sites: Grant County, IN; Yamhill County, OR; Charlottesville, VA; and Ramsey County, MN. As Tier II sites, their technical assistance is expected to be limited in comparison to the Tier I sites. The technical assistance will be guided by the ''Roadmap to Phase II'', each site's strategic action plan and logic model, and other specialized assistance required to reach the jurisdiction's identified outcomes.

(2) Subject to the availability of funds, work with NIC project manager to provide technical assistance and guidance to non-EBDM sites that submit requests for assistance in implementing the EBDM framework within their criminal justice system.

Application Requirements: Applications should be concisely written, typed double-spaced and reference the project by the ''NIC Opportunity Number'' and Title in this announcement. The package must include: A cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative in response to the statement of work and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying;

Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/general/certif-frm.pdf.*)

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: Up to 165,000 is available for this project, subject to available funding, but preference will be given to applicants who provide the most cost efficient solutions in accomplishing the scope of work. Determination will be made based on best value to the government, not necessarily the lowest bid. Funds may be used only for the activities that are directly related to the project.

This project will be a collaborative venture with the NIC Community Services Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Required Expertise: Successful applicants must be able to demonstrate that they have the organizational capacity to carry out the deliverables of this project, including extensive experience in correctional and criminal justice policy and practice, and a strong background in criminal justice system-wide change with experience in the implementation of evidence-based practices in the criminal justice system to reduce pretrial misconduct and offender risk of re-offending.

Applicants should also have demonstrated the ability to package a criminal justice strategy and advance it to a national audience.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows:

Program Narrative: (50%)

Are all of the project tasks adequately discussed, and is there a clear statement of how each will be accomplished, including the staffing, resources, and strategies to be employed? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational Capabilities: (25%)

Do the skills, knowledge, and expertise of the applicant(s) and the proposed project staff demonstrate a high level of competency to carry out the tasks? Does the applicant have the necessary experience and organizational capacity to carry out the goals of the project?

Program Management/Administration: (25%)

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If there are consultants and/or partnerships proposed, is there a clear structure to ensure effective utilization and coordination? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

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).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CCR Web site: *http://www.ccr.gov.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 11CC07. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.603.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372.

E.O. 12372 allows states the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian Tribal governments) should contact their State Single Point of Contact (SPOC), a list of which can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Christopher Innes,

Chief, Research & Information Services, National Institute of Corrections.

[FR Doc. 2011–20520 Filed 8–11–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,252; TA–W–75,252A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–75,252
The Goodyear Tire and Rubber Company, North American Tire, Union City, TN

TA–W–75,252A
Leased Workers from the Hamilton-Ryker Group LLC, Securitas Security Services, Take Care Corporation, Conestoga Rovers and Associates, Phillips Engineering, Rockwell Engineering, Excel Logistics, and American Food and Vending, Calhoun Spotting Services, and Job World, Inc., Working On-Site at the Goodyear Tire and Rubber Company, North American Tire, Union City, TN

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 6, 2011, applicable to the Goodyear Tire and Rubber Company, North American Tire Company, including on-site leased workers from the Hamilton-Ryker Group LLC, Securitas Security Services, Take Care Corporation, Conestoga Rovers and Associates, Phillips Engineering, Rockwell Engineering, Excel Logistics, and American Food and Vending. The workers produce passenger and light truck tires. The notice was published in the **Federal Register** on April 22, 2011 (76 FR 22731).

At the request of the Tennessee State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Calhoun Spotting Service and Job World, Inc. were employed on-site at the Union City, Tennessee location of The Goodyear Tire and Rubber Company. The Department has determined that these workers were sufficiently under the control of The Goodyear Tire and Rubber Company, Union City, Tennessee to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Calhoun Spotting Service and Job World, Inc. working on-site at the Union City, Tennessee location of The Goodyear Tire and Rubber Company.

The amended notice applicable to TA–W–75,252 is hereby issued as follows:

All workers of The Goodyear Tire and Rubber Company, North American Tire,

Union City, Tennessee (TA–W–75,252), who became totally or partially separated from employment on or after June 26, 2010, through April 6, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

The amended notice applicable to TA–W–75,252A is hereby issued as follows:

All leased workers from The Hamilton-Ryker Group LLC, Securitas Security Services, Take Care Corporation, Conestoga Rovers and Associates, Phillips Engineering, Rockwell Engineering, Excel Logistics, and American Food and Vending, Calhoun Spotting Service, and Job World, Inc. working on-site at The Goodyear Tire and Rubber Company, North American Tire, Union City, Tennessee (TA–W–75,252A), who became totally or partially separated from employment on or after February 10, 2010, through April 6, 2013, and all workers in the group threatened with total or partial separation from employment on April 6, 2011 through April 6, 2013, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 29th day of July, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–20521 Filed 8–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,044]

Croscill Acquisition, LLC, Currently Known as Croscill Home, LLC, Plant No. 8, Including On-Site Leased Workers From Ex-Cell Home Fashions, Inc., Oxford, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 25, 2009, applicable to workers of Croscill Acquisition, LLC, formerly doing business as Royal Home Fashions, a subsidiary of Croscill, Inc., Plant No. 8, Oxford, North Carolina. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57342). The notice was amended on January 4, 2011 to include currently known as Croscill Home, LLC. The amended notice was published in the **Federal Register** on January 14, 2011 (76 FR 2713). The workers are engaged in warehousing and distribution services of household products, and are separately identifiable from workers producing samples at the same location.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm.

New information shows that workers leased from Ex-Cell Home Fashions, Inc. were employed on-site at the Oxford, North Carolina location of Croscill Acquisition, LLC, currently known as Croscill Home, LLC, Plant No. 8. The Department has determined that these workers were sufficiently under the control of Croscill Acquisition, LLC, currently known as Croscill Home, LLC, Plant No. 8 to be considered leased workers.

Accordingly, the Department is amending this certification to include leased workers from Ex-Cell Home Fashions, Inc. working on-site at the Oxford, North Carolina location of the subject firm.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the acquisition of warehousing and distribution services from a foreign country.

The amended notice applicable to TA–W–70,044 is hereby issued as follows:

All workers of Croscill Acquisition, LLC, currently known as Croscill Home, LLC, Plant No. 8, included on-site leased workers from Ex-Cell Home Fashions, Inc., Oxford, North Carolina, engaged in employment related to warehousing and distribution services, who became totally or partially separated from employment on or after May 25, 2009, through August 25, 2011, and all workers in the group threatened with total or partial separation from employment on August 25, 2009 through August 25, 2011, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 29th day of July, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–20524 Filed 8–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,218; TA–W–73,218A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–73,218
International Business Machines Corporation, ITD Business Unit, Division 7, E-mail and Collaboration Group, Including Workers Off-Site From Various States in the United States Reporting to Armonk, NY

TA–W–73,218A
International Business Machines Corporation, Web Strategy and Enablement Organization, Including Workers Off-Site From Various States in the United, States Reporting to Armonk, NY.

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor (Department) issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 14, 2010, applicable to workers of International Business Machines Corporation (IBM), ITD Business Unit, Division 7, Email and Collaboration Group, including workers off-site from various states in the United States reporting to Armonk, New York. The workers are engaged in employment related to the supply of system server support for e-mail and data servers related to Division 7. The Department's Notice was published in the **Federal Register** on May 28, 2010 (75 FR 30067).

At the request of workers, the Department reviewed the certification for workers of the subject firm. The company confirmed that workers of the Web Strategy and Enablement Organization provided support to the IDT Business Unit and reported to the Armonk, New York facility. The company also confirmed that a number of workers assigned to the Web Strategy and Enablement Organization are located in various states in the United States and report to the Armonk, New York facility.

Based on these findings, the Department is amending this certification to include workers of International Business Machines Corporation, Web Strategy and Enablement Organization, including workers off-site from various states in the United States reporting to Armonk, New York (TA–W–73,218A).

The amended notice applicable to TA–W–73,218 is hereby issued as follows:

All workers of International Business Machines Corporation (IBM), ITD Business Unit, Division 7, e-mail and Collaboration Group, including workers off-site from various states in the United States reporting to Armonk, New York (TA–W–73,218), and all workers of International Business Machines Corporation (IBM), Web Strategy and Enablement Organization, including workers off-site from various states in the United States reporting to Armonk, New York (TA–W–73,218A), who became totally or partially separated from employment on or after January 6, 2009, through May 14, 2012, and all workers in the group threatened with total or partial separation from employment on May 14, 2010 through May 14, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 25th day of July, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–20526 Filed 8–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,158; TA–W–73,158A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–73,158
Siemens Medical Solutions USA, Inc., Oncology Care Systems Division, Concord, CA
TA–W–73,158A
Siemens Medical Solutions USA, Inc., Global Services/Supply Chain Management, Malvern, PA

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor (Department) issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 2010, applicable to workers and former workers of Siemens Medical Solutions USA, Inc. (Seimens), Oncology Care Systems Division, Concord, California (subject firm). The workers are engaged in employment related to the supply of administrative services. The Department's Notice of determination was published in the **Federal Register** on April 23, 2010 (75 FR 21355).

At the request of workers, the Department reviewed the certification for workers of the subject firm.

New information provided by Seimens reveals that workers of Global Services/Supply Chain Management, Malvern, Pennsylvania, provided support to several Siemens facilities, including but not limited to, the Concord, California facility (TA–W–73,158). Global Services/Supply Chain Management, Malvern, Pennsylvania supplies information technology services (such as help desk, application development and support, and data center operations) in support of Seimens.

Based on these findings, the Department is amending the certification to include workers of the Global Services/Supply Chain Management, Malvern, Pennsylvania facility of Siemens Medical Solutions USA, Inc. (TA–W–73,158A). The worker group at the Malvern, Pennsylvania facility does not include on-site leased workers from temporary agencies.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in services to Germany.

The amended notice applicable to TA–W–73,158 is hereby issued as follows:

All workers of Siemens Medical Solutions USA, Inc., Oncology Care Systems Division, Concord, California (TA–W–73,158) and Seimens Medical Solutions USA, Inc., Global Services/Supply Chain Management, Malvern, Pennsylvania (TA–W–73,158A), who became totally or partially separated from employment on or after December 22, 2008, through March 11, 2012, and all workers in the groups threatened with total or partial separation from employment on March 11, 2010 through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 29th day of July, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–20525 Filed 8–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *July 18, 2011 through July 22, 2011.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–80,032; NL Fashion, Inc., New York, New York: February 27, 2010.

TA–W–80,263; Alabama Wholesale Socks, Inc., Sylvania, Alabama: June 27, 2010.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,137; Yorktowne, Inc., Red Lion, Pennsylvania: March 31, 2010.

TA–W–80,140; Trans-Lux Corporation, Norwalk, Connecticut: April 27, 2010.

TA–W–80,140A; Trans-Lux Corporation, Stratford, Connecticut: April 27, 2010.

TA–W–80,140B; Trans-Lux Corporation, Des Moines, Iowa: April 27, 2010.

TA–W–80,150; Hale Products, Inc., Conshohocken, Pennsylvania: April 5, 2010.

TA–W–80,238; Datalogic Mobile, Inc., Eugene, Oregon: September 1, 2011.

TA–W–80,238A; Datalogic Mobile, Inc., Eugene, Oregon: September 24, 2011.

TA–W–80,250; Roseburg Forest Products, Coquille, Oregon: June 21, 2010.

TA–W–80,273; Weave Textiles, LLC, Denver, Pennsylvania: July 7, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,203; Zeledyne Glass Plant, Tulsa, Oklahoma: May 27, 2010.

TA–W–80,258; Avery Dennison, Greensboro, North Carolina: January 30, 2011.

TA–W–80,258A; Leased Workers from Adecco On-Site at Avery Dennison, Greensboro, North Carolina: July 29, 2010.

TA–W–80,272; Knight, LLC, Lake Forest, California: June 7, 2010.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,176; BASF Corporation, Southfield, Michigan: May 12, 2010.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–80,032; NL Fashion, Inc., New York, New York.

TA–W–80,263; Alabama Wholesale Socks, Inc., Sylvania, Alabama.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–80,256; The News & Observer Publishing Company, Raleigh, North Carolina.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,222; Saint-Gobain Abrasives, Inc., Watervliet, New York.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,019; Sea Gull Lighting Products, LLC, Riverside, New Jersey.

TA–W–80,084; Dietrich Industries, Blairsville, Pennsylvania.

TA–W–80,112; STK, LLC, Lemon Furnace, Pennsylvania.

TA–W–80,112A; STK, LLC, Coconut Creek, Florida.

TA–W–80,220; Pelican Importing & Exporting, Houston, Texas.

TA–W–80,239; Eastman Kodak Company, Rochester, New York.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,160; Pension Systems Corporation, Sherman Oaks, California.

TA–W–80,215; Dex One, Cary and Morrisville, North Carolina.

TA–W–80,215A; Dex One, Phoenix, Arizona.

TA–W–80,215B; Dex One, Santa Monica, California.

TA–W–80,215C; Dex One, Englewood and Lone Tree, Colorado.

TA–W–80,215D; Dex One, Chicago, Illinois.

TA–W–80,215E; Dex One, Overland Park, Kansas.

TA–W–80,215F; Dex One, Dunmore, Pennsylvania.
TA–W–80,215G; Dex One, Bellevue, Washington.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–80,044; The Huck Group, Quincy, Illinois.
TA–W–80,271; HarperCollins Publishers, Williamsport, Pennsylvania.

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W–80,252; Dex One, Cary and Morrisville, North Carolina.
TA–W–80,252A; Dex One, Phoenix, Arizona.
TA–W–80,252B; Dex One, Santa Monica, California.
TA–W–80,252C; Dex One, Englewood and Line Tree, Colorado.
TA–W–80,252D; Dex One, Chicago, Illinois.
TA–W–80,252E; Dex One, Overland Park, Kansas.
TA–W–80,252F; Dex One, Dunmore, Pennsylvania.
TA–W–80,252G; Dex One, Bellevue, Washington.
TA–W–80,292; Mitsubishi Digital Electronics America, Inc., Irvine, California.

I hereby certify that the aforementioned determinations were issued during the period of *July 18, 2011 through July 22, 2011.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: August 1, 2011.

Michael W. Jaffe,

Certifying Officer, Office, Trade Adjustment Assistance.

[FR Doc. 2011–20523 Filed 8–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 22, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 22, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 29th day of July 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[16 TAA Petitions Instituted between 7/18/11 and 7/22/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80292	Mitsubishi Digital Electronics America, Inc. (Workers)	Irvine, CA	07/18/11	07/15/11
80293	Klaussner Furniture Industry (Workers)	Milford, IA	07/18/11	07/15/11
80294	Rockwell Collins (Company)	Cedar Rapids, IA	07/18/11	07/15/11
80295	Ossur Americas, Inc. (Company)	Foothill Ranch, CA	07/18/11	07/15/11
80296	B&H Flowers Inc. (Workers)	Watsonville, CA	07/19/11	07/13/11
80297	Steiff North America (Company)	Lincoln, RI	07/19/11	06/28/11
80298	SimplexGrinnell LP (Company)	Westminster, MA	07/19/11	07/18/11
80299	DST Output (State/One-Stop)	South Windsor, CT	07/19/11	07/08/11
80300	Rancho la Puerta LLC (Workers)	San Diego, CA	07/19/11	07/15/11
80301	Capgemini America (Workers)	Lee's Summit, MO	07/20/11	07/18/11
80302	Disney Interactive Media Group (Workers)	Glendale, CA	07/20/11	07/12/11
80303	Vallejo Times Herald (Workers)	Vallejo, CA	07/20/11	07/19/11
80304	RadiSys Corporation (Company)	San Diego, CA	07/21/11	07/20/11
80305	General Advertising Products (State/One-Stop)	Cincinnati, OH	07/21/11	07/20/11
80306	JEM Ensenada Mexico (State/One-Stop)	San Fernando, CA	07/21/11	07/19/11
80307	CommScope, Inc. (Company)	Conover, NC	07/21/11	07/20/11

[FR Doc. 2011–20522 Filed 8–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,099]

West, A Thomson Reuters Business, Thomson Reuters Legal Division, Including On-Site Leased Workers From Adecco, Albuquerque, New Mexico; Notice of Termination of Reconsideration Investigation

On April 28, 2011, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of West, A Thomson Reuters Business, Thomson Reuters Legal Division, including On-Site Leased Workers from Adecco, Albuquerque, New Mexico. The Department's Notice of affirmative determination was published in the **Federal Register** on May 11, 2011 (76 FR 27365).

On July 20, 2011, the Department issued an amended certification applicable to workers and former workers of West, A Thomson Reuters Business, Thomson Reuters Legal, including on-site leased workers from Adecco, including a teleworker located in Albuquerque, New Mexico reporting to Eagan, Minnesota (TA–W–73,198). The Department's Notice of amended certification will soon be published in the **Federal Register**.

Because the petitioning group of workers is covered by an existing certification which expires on June 21, 2012, further investigation in this case would serve no purpose, and the reconsideration investigation has been terminated.

Conclusion

After careful review of the administrative record and the findings of the reconsideration investigation, I am terminating the investigation of the petition for worker adjustment assistance filed on behalf of workers and former workers of West, A Thomson Reuters Business, Thomson Reuters Legal Division, including on-site leased workers from Adecco, Albuquerque, New Mexico.

Signed in Washington, DC, on this 29th day of July, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–20527 Filed 8–11–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice; SES Performance Review Board.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

DATES: *Effective Date:* This appointment is effective on August 12, 2011.

FOR FURTHER INFORMATION CONTACT: Pamela S. Pope, Office of Human Capital (H), National Archives and Records Administration, 1 Archives Drive, St. Louis, MO 63138, (314) 801–0882.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Debra Steidel Wall, Deputy Archivist of the United States, Thomas E. Mills, Chief Operating Officer, Analisa J. Archer, Chief Human Capital Officer, and Micah M. Cheatham, Chief Financial Officer. These appointments supersede all previous appointments.

Dated: August 9, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–20676 Filed 8–11–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 12, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2011–002) to David Ainley on May 28, 2010. The issued permit allows the applicant to enter Beaufort Island ASPA 105, Cape Royds ASPA 121, and Cape Crozier ASPA 124 to band 1800 Adelie fledglings, implant PIT tags on 300 Adelie adults, apply TDR/satellite tags, weigh and blood sample 45 Adelie adults, and mark nests as part of a study to determine the effect of age, experience and physiology on individual foraging efficiency, breeding success and survival, and develop a comprehensive model for the Ross-Beaufort island metapopulations incorporating all the factors investigated.

The applicant requests a modification to his permit to allow:

(1) Inject PIT tags under the skin of ≤120 Adelie chicks at Cape Crozier (ASPA 124) and ≤100 chicks at Cape Royds (ASPA 121) which they will attempt to detect with a ground-based antennae to read the tags of the birds when they return to the colony in the future, thus eliminating the need for metal flipper bands to monitor penguin demography.

(2) Would like to increase the 45 adult birds to 55 with TDR/satellite tags. The addition of 10 birds allows for potential instrument failure and the need to maintain an overall sample size of 45+ birds with working TDRs each season.

(3) Given the cold temperatures at in Antarctica, especially Cape Crozier, it is very difficult to collect blood from the leg or flipper of a penguin in the short time period needed for measuring corticosterone levels. They would like to switch to drawing blood from the jugular vein. Dr. Lisa Balance has extensive experience with penguin physiology and jugular blood draw techniques and will deploy with the team to refresh their training in this blood draw technique.

(4) Follow chicks from the 55 adults equipped with TDR instruments through the creching stage, which has never been studied. They will need to individually mark chicks using ''T-bar anchor tags'' (or Fish tags) during the first weighing. By studying the chicks at this stage to adult would help to determine a more accurate measure of reproductive success. The tag will be removed, however if the chick is not found, the tag will eventually wear off.

(5) Finally, they plan to extract ~3 feathers from the backs of adults with TDRs and PIT tags in order to determine sex using genetic analysis, as well as to relate melanin levels to bird condition..

Location: ASPA 121—Cape Royds, and ASPA 124—Cape Crozier, Ross Island, and ASPA 105—Beaufort Island, Ross Sea.

Dates: September 1, 2011 to August 31, 2015.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–20477 Filed 8–11–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Nominations for the Class of 2012–2018, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Monday, August 29, 2011 from 1 p.m.–3 p.m., EDT

SUBJECT MATTER: Discussion of NSB Candidate Reviews and Ratings.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Kim Silverman, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. 2011–20643 Filed 8–10–11; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0059]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 3, 2011 (76 FR 24924).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 450, ''General Assignment.''

3. *Current OMB approval number:* 3150–0114.

4. *The form number if applicable:* NRC Form 450.

5. *How often the collection is required:* Once during the contract closeout process.

6. *Who will be required or asked to report:* Contractors.

7. *An estimate of the number of annual responses:* 60.

8. *The estimated number of annual respondents:* 60.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 120.

10. *Abstract:* During the contract closeout process for cost-reimbursement and time-and-materials type contracts, the NRC requires the contractor to execute NRC Form 450, General Assignment. Execution of this form grants to the government all rights, title, and interest to refunds arising out of the contractor performance.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 12, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0114), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 8th day of August, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–20484 Filed 8–11–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0056]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 27, 2011 (76 FR 23628).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 81, ''Standard Specifications for Granting of Patent Licenses.''

3. *Current OMB approval number:* 3150–0121.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* Applications for licenses are submitted once. Other reports are submitted annually or as other events require.

6. *Who will be required or asked to report:* Applicants for and holders of NRC licenses to NRC inventions.

7. *An estimate of the number of annual responses:* 1.

8. *The estimated number of annual respondents:* 1.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 37; however, no applications are anticipated during the next 3 years.

10. *Abstract:* As specified in 10 CFR part 81, the NRC may grant non-exclusive licenses or limited exclusive licenses to its patent inventions to responsible applicants. Applicants for licenses to NRC inventions are required to provide information which may provide the basis for granting the requested license. In addition, all license holders must submit periodic reports on efforts to bring the invention to a point of practical application and the extent to which they are making the benefits of the invention reasonably accessible to the public. Exclusive license holders must submit additional information if they seek to extend their licenses, issue sublicenses, or transfer the licenses. In addition, if requested, exclusive license holders must promptly supply to the United States Government copies of all pleadings and other papers filed in any patent infringement lawsuit, as well as evidence from proceedings relating to the licensed patent.

The public may examine and have copied for fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 12, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0121), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 4th day of August, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–20485 Filed 8–11–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0182]

Terrestrial Environmental Studies for Nuclear Power Stations

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG–4016, ''Terrestrial Environmental Studies for Nuclear Power Stations.'' This guide provides technical guidance that the NRC staff considers acceptable for terrestrial environmental studies and analyses supporting licensing decisions for nuclear power reactors.

DATES: Submit comments by October 11, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2011–0182 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0182. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this regulatory guide 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.* The regulatory analysis is available electronically under ADAMS Accession Number ML110130046.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0182.

Electronic copies of DG–4016 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Library at *http://www.nrc.gov/reading-rm/doc-collections/*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Peyton Doub, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–6703, e-mail to *Peyton.Doub@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

This guide focuses on terrestrial analyses for licensing new nuclear power stations under the combined licensing process in Title 10 of the Code of Federal Regulations (10 CFR) part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' and power reactors under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' This guide is also useful in identifying the more limited studies and analyses needed for nuclear reactor operating license renewal under 10 CFR Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' and portions may also be relevant to nuclear reactor decommissioning.

Dated at Rockville, Maryland, this 5th day of August, 2011.

For the Nuclear Regulatory Commission.

Edward O'Donnell,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–20511 Filed 8–11–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0304]

Guidance for the Assessment of Beyond-Design-Basis Aircraft Impacts

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a new guide regulatory guide, (RG) 1.217, ''Guidance for the Assessment of Beyond-Design-Basis Aircraft Impacts.'' This guide describes a method that the staff of NRC considers acceptable for use in satisfying its regulations regarding the consideration of aircraft impacts for new nuclear power reactors.

ADDRESSES: You can access publicly available documents related to this regulatory guide 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.* The regulatory guide is available electronically under ADAMS Accession Number ML092900004. The regulatory analysis may be found in ADAMS under Accession No. ML112101610.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0304.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Mekonen M. Bayssie, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–251–7489 or e-mail to *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC or Commission) is issuing a new guide in the agency=s ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

This guide endorses the methodologies described in the industry guidance document, Nuclear Energy Institute (NEI) 07–13, ''Methodology for Performing Aircraft Impact Assessments for New Plant Designs,'' Revision 8, issued April 2011. The public version of NEI 07–13 can be found in the NRC's Agencywide Documents Access and Management System (ADAMS), Accession No. ML091490723.

II. Further Information

DG–1176 was published in the **Federal Register** on July 10, 2009 (74 FR 33282), for a 60-day public comment period. The public comment period closed on September 8, 2009. No comments were submitted during this period. Electronic copies of Regulatory Guide 1.217 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

Dated at Rockville, Maryland, this 5th day of August 2011.

For the Nuclear Regulatory Commission.

Edward O'Donnell,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–20513 Filed 8–11–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0179; Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission or NRC) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its application dated November 22, 2010, for a proposed amendment to Facility Operating License Nos. NPF–76 and NPF–80 for the South Texas Project (STP), Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would have revised the application of Risk-Managed Technical Specifications to Technical Specification 3.7.7, ''Control Room Makeup and Cleanup Filtration System.'' The purpose of the change was to correct a misapplication of the Configuration Risk Management Program that is currently allowed by the Technical Specifications.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 5, 2011 (76 FR 18803). However, by letter dated July 11, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 22, 2010, and the licensee's letter dated July 11, 2011, 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 20852. 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 4th day of August 2011.

For the Nuclear Regulatory Commission.

Balwant K. Singal,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–20515 Filed 8–11–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65053; File No. SR–OC–2011–01]

Self-Regulatory Organizations; OneChicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Allow for Four Decimal Point Pricing for Block and Exchange for Physical (''EFPs'') Trades

August 8, 2011.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on August 2, 2011, OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). On July 26, 2011, OneChicago filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'').[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to allow block trades and the futures component of EFP trades to be traded/priced in four decimals points. Regular trades (non-block or non EFP) will continue to trade in only two decimal points. The text of the proposed rule change is available on the Exchange's Web site at *http://www.onechicago.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OneChicago 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. OneChicago 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago is proposing to allow block trades and the futures component of EFP trades to be priced in four decimals points. The additional precision will aid in aligning these generally larger sized trades with the appropriate implied interest rate desired by the trade participants. The current two decimal pricing forces block transactions to be split into multiple transactions to arrive at the futures price that achieves the desired financing rate. This change will reduce the need to split block transactions. The change for EFPs will support reflecting the already four decimal point EFP price in the futures prices as opposed to the current practice of forcing it to be reflected in the stock price.

Market participants and system providers will need to modify their technologies to accommodate the additional decimals points for block trades and EFPs.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to foster cooperation and coordination with persons facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and national market system. The proposed rule would foster cooperation with market participants by allowing them to align large-sized trades with their desired interest rate. Moreover, the proposed rule would alleviate the need to split transactions, thereby removing an impediment to and

[4] 15 U.S.C. 78f(b).

perfecting the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the OneChicago proposed rule change have not been solicited and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will be effective upon filing and operational on August 15, 2011. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(7) of the Act.[5]

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–OC–2011–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OC–2011–01. 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–OC–2011–01 and should be submitted on or before September 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20576 Filed 8–11–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(7).

[6] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65054; File No. SR–ISE–2011–36]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt the Content Outline for the Proprietary Traders Examination (Series 56)

August 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Pursuant to the provisions of Section 19(b)(1) of the Act,[5] the Exchange is filing with the Commission the content outline for the Proprietary Traders Qualification Examination (''Series 56'') program. ISE is not proposing any textual changes to the Rules of ISE.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 15b7–1,[6] promulgated under the Exchange Act,[7] ''No registered broker or dealer shall effect any transaction in * * * any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards * * * established by the rules of any national securities exchange * * * '' ISE Rule 313 sets forth the requirements for registration and qualification of associated persons. Specifically, ISE Rule 313 provides that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.15b7–1.

[7] 15 U.S.C. 78a *et seq.*

individual associated persons that are ''engaged or to be engaged in the securities business of a Member shall be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.'' [8] Further, Rule 313 requires, among other things, that an individual associated person submit an application for registration and pass the appropriate qualification examination, as prescribed by the Exchange, before the registration can become effective.

In accordance with .06 of the Supplementary Material to Rule 313, those individuals shall be considered to be ''engaged in the securities business of a Member'' and subject to the registration requirements if (i) The individual associated person conducts proprietary trading, acts as a market-maker, effects transactions on behalf of a broker-dealer account, supervises or monitors proprietary trading, market-making or brokerage activities on behalf of the broker-dealer, supervises or conducts training for those engaged in proprietary trading, market-making or brokerage activities on behalf of a broker-dealer account; or (ii) the individual associated person engages in the management of one or more activities identified in (i) above as an officer, partner or director.[9]

The Series 56 examination tests a candidate's knowledge of proprietary trading generally and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. While the examination is primarily dedicated to topics related to proprietary trading, the Series 56 examination also covers a few general concepts relating to customers.[10]

The Series 56 examination program is shared by ISE and the following Self-Regulatory Organizations (''SROs''): Boston Options Exchange; Chicago Board Options Exchange, Inc. (''CBOE''); C2 Options Exchange, Incorporated; Chicago Stock Exchange, Incorporated; NASDAQ OMX, BX; NASDAQ OMX, PHLX; NASDAQ Stock Market LLC; National Stock Exchange, Incorporated; New York Stock Exchange, LLC; NYSE AMEX, Incorporated; and NYSE ARCA, Incorporated.

Upon request by the SROs referenced above, FINRA staff convened a committee of industry representatives, ISE staff and staff from the other SROs referenced above, to develop the criteria for the Series 56 examination program. As a result, ISE is proposing to set forth the content of the examination. The qualification examination consists of 100 multiple choice questions. Candidates will have 150 minutes to complete the exam. The content outline describes the following topical sections comprising the examination: Personnel, Business Conduct and Recordkeeping and Reporting Requirements, 9 questions; Markets, Market Participants, Exchanges, and SROs, 8 questions; Types and Characteristics of Securities and Investments, 20 questions; Trading Practices and Prohibited Acts, 50 questions; and Display, Execution and Trading Systems, 13 questions. Representatives from the applicable SROs shall meet on a periodic basis to evaluate and, as necessary, update, the Series 56 examination program.

CBOE filed a similar filing with the Commission regarding the Series 56 examination program [11] and ISE understands that the other applicable SROs will also file similar filings with the Commission. ISE proposes to implement the Series 56 examination program when this filing becomes effective.[12] The Exchange will announce all relevant dates with respect to the Series 56 examination program through a Regulatory Information Circular.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(1) [14] of the Act in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3) [15] of the Act, which authorizes ISE to prescribe standards of training, experience and competence for persons associated with ISE members, in that this filing comprises the content outline and relevant specifications for the Series 56 examination program. ISE believes the Series 56 examination program establishes the appropriate qualifications for an individual associated person that is required to register as a Proprietary Trader under Exchange Rule 313, including, but not limited to, Market-Makers, proprietary traders and individuals effecting transactions on behalf of other broker-dealers. The Series 56 addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for individuals required to register as a Proprietary Trader.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, 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. Rule 19b–4(f)(6) [18] 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

[8] Under ISE's rules, anyone functioning as a principal must register as such with the Exchange. The new examination will serve as a prerequisite to the Series 24 and the Series 9/10 examinations for principals who are engaged solely in proprietary trading. (Generally, all principals must qualify as representatives before qualifying as principals.) *See* Securities and [sic] Exchange Act Release No. 63843 (February 4, 2011), 76 FR 7884 (SR–ISE–2010–115).

[9] In accordance with Rule 313, an individual associated person that is engaged in the supervision or monitoring of proprietary trading, market-making or brokerage activities and/or that is engaged in the supervision or training of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities will be subject to heightened qualification requirements, as prescribed by the Exchange.

[10] The Commission notes that proprietary trading firms do not have customers.

[11] *See* Securities and Exchange Commission [sic] Release No. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR–CBOE–2011–056).

[12] The Series 56 examination became available in WebCRD for ISE members on June 20, 2011.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78f(c)(3).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] *Id.*

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Under Rule 19b–4(f)(6) of the Act,[19] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Commission is waiving the 30-day operative period for this filing so that it may become effective and operative upon filing.[20] The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange to adopt the content outline, and provide notice of having done so to associated persons of its members, near the same time as other exchanges. The Commission, therefore, designates the proposed rule change to be operative upon filing with the Commission.

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 No. SR–ISE–2011–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–36. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–36 and should be submitted by September 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20578 Filed 8–11–11; 8:45 am]

BILLING CODE 8011–01–P

[19] *Id.*

[20] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65056; File No. SR–BX–2011–053]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Limited Category of Principal Registration for Proprietary Traders

August 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 3, 2011, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing with the Commission a proposed rule change to amend its Rule 1022, Categories of Principal Registration, to adopt a new limited category of principal registration for proprietary traders, as described further below. BX will implement the proposal upon notice to its membership.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recognize a new category of limited principal registration. Specifically, the Exchange proposes to recognize the new Proprietary Trader Principal category as a limited principal category in Rule 1022(h). Currently, Exchange Rule 1021 requires all persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with the Exchange in the category of registration appropriate to the function to be performed as specified in Rule 1022. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

category of registration as specified by the Exchange Board. Pursuant to Rule 1021(b), persons associated with a member, enumerated in subparagraphs (1) through (5) hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as principals. Such persons shall include: (1) Sole Proprietors; (2) Officers; (3) Partners; (4) Managers of Offices of Supervisory Jurisdiction, and (5) Directors of Corporations.

Rule 1021(e), Requirement of Two Registered Principals for Members, spells out that an Exchange member, except a sole proprietorship, shall have at least two officers or partners who are registered as principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022; provided, however, that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one officer or partner who is registered as a principal.

Rule 1022 lists the categories of principal registration. In addition to ''General Securities Principal,'' which is the broadest category, there are two limited categories of principal registration: Financial and Operations, and General Securities Sales Supervisor.

The Exchange proposes to add another category of limited principal. The new Proprietary Trader Principal category would be available for persons whose supervisory responsibilities in the investment banking and securities business are limited to the activities of a member that involve proprietary trading. Furthermore, it would require that he or she be registered pursuant to Exchange rules as a Proprietary Trader,[5] be qualified to be so registered by passing the Series 24 examination, and not function in a principal capacity with responsibility over any area of business activity other than proprietary trading.

The Exchange has been working with other exchanges and the Financial Industry Regulatory Authority (''FINRA'') to develop this registration category. This category is in lieu of registration as a General Securities Principal, for which the prerequisite qualification examination is the Series 7. The appropriate qualification examination for the proposed new registration category of Proprietary Trader Principal is the Series 24, which is the same qualification required for registration as a General Securities Principal; no new examination has been developed. However, the prerequisite examination for the new Proprietary Trader Principal category is the new Series 56. Accordingly, a person who has passed the Series 56 can register as a Proprietary Trader Principal and take the Series 24 examination, under this proposal, but cannot register as a General Securities Principal without first qualifying as a General Securities Representative and passing the Series 7. Thus, although the Series 24 will now be the appropriate qualification examination for both categories (General Securities Principal and Proprietary Trader Principal), different prerequisites apply and different registration categories result.

The Exchange believes that the new principal registration category is an appropriate corollary to the new Proprietary Trader representative registration category, filed separately, and reflects a substantial joint-exchange effort to develop a registration framework specific to principals supervising persons engaged in proprietary trading, market making and effecting transactions on behalf of broker-dealers. Furthermore, BX believes that the Series 24 is the appropriate examination for Proprietary Trader Principals, because it tests knowledge and understanding of supervision-related rules.

The Proprietary Trader Principal registration counts towards the two principal requirements in Rule 1021(e). The Exchange believes that this is appropriate because the same comprehensive qualification examination, the Series 24, is required.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,[7] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,[8] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by offering a new, limited principal registration category to Exchange members. The Exchange believes that the requirements of this new category should help ensure that principals who supervise proprietary traders and proprietary trading are, and will continue to be, properly trained and qualified to perform their functions, because the new Proprietary Trader Principal category is limited and tailored to persons supervising proprietary trading functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, 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. Rule 19b–4(f)(6)[11] 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.

Under Rule 19b–4(f)(6) of the Act,[12] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30 day operative period for this filing so that it may become effective and operative upon filing with the Commission pursuant to

[5] BX Rule 1032(b). *See* SR–BX–2011–051.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78(c)(3)(B) [sic].

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] *Id.*

Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(6) thereunder. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange to make the new registration category available near the same time as other exchanges.[14] The Commission, therefore, designates the proposal to be operative upon filing with the Commission.

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–BX–2011–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–053. 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–BX–2011–053 and should be submitted on or before September 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20580 Filed 8–11–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65055; File No. SR–NASDAQ–2011–106]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Limited Category of Principal Registration for Proprietary Traders

August 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on August 1, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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

NASDAQ is filing with the Commission a proposal to amend NASDAQ Rule 1022, Categories of Principal Registration, to adopt a new limited category of principal registration for proprietary traders, as described further below. NASDAQ will implement the proposal upon notice to its membership.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recognize a new category of limited principal registration. Specifically, NASDAQ proposes to recognize the new Proprietary Trader Principal category as a limited principal category in Rule 1022(h). Currently, NASDAQ Rule 1021 requires all persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with NASDAQ in the category of registration appropriate to the function to be performed as specified in Rule 1022. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the NASDAQ Board. Pursuant to Rule 1021(b), persons associated with a member, enumerated in subparagraphs (1) through (5) hereafter, who are actively engaged in the management of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as principals. Such persons shall include: (1) Sole Proprietors; (2) Officers; (3) Partners; (4) Managers of Offices of Supervisory Jurisdiction; and (5) Directors of Corporations.

Rule 1021(e), Requirement of Two Registered Principals for Members, spells out that a NASDAQ member, except a sole proprietorship, shall have at least two officers or partners who are registered as principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022; provided, however, that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one officer or partner who is registered as a principal.

Rule 1022 lists the categories of principal registration. In addition to ''General Securities Principal,'' which is the broadest category, there are three [sic] limited categories of principal registration: Financial and Operations, Introducing Broker/Dealer Financial and Operations, Investment Company and Variable Contracts Products, and General Securities Sales Supervisor.

NASDAQ proposes to add another category of limited principal. The new Proprietary Trader Principal category would be available for persons whose supervisory responsibilities in the investment banking and securities business are limited solely to the activities of a member that involve proprietary trading. Furthermore, it would require that he or she be registered pursuant to NASDAQ rules as a Proprietary Trader,[5] be qualified to be so registered by passing the Series 24 examination, and not function in a principal capacity with responsibility over any area of business activity other than proprietary trading.

NASDAQ has been working with other exchanges and the Financial Industry Regulatory Authority (''FINRA'') to develop this registration category. This category is in lieu of registration as a General Securities Principal, for which the prerequisite qualification examination is the Series 7. The appropriate qualification examination for the proposed new registration category of Proprietary Trader Principal is the Series 24, which is the same qualification required for registration as a General Securities Principal; no new examination has been developed. However, the prerequisite examination for the new Proprietary Trader Principal category is the new Series 56. Accordingly, a person who has passed the Series 56 can register as a Proprietary Trader Principal and take the Series 24 examination, under this proposal, but cannot register as a General Securities Principal without first qualifying as a General Securities Representative and passing the Series 7. Thus, although the Series 24 will now be the appropriate qualification examination for both categories (General Securities Principal and Proprietary Trader Principal), different prerequisites apply and different registration categories result.

NASDAQ believes that the new principal registration category is an appropriate corollary to the new Proprietary Trader representative registration category, filed separately, and reflects a substantial joint-exchange effort to develop a registration framework specific to principals supervising persons engaged in proprietary trading, market making and effecting transactions on behalf of broker-dealers. Furthermore, NASDAQ believes that the Series 24 is the appropriate examination for Proprietary Trader Principals, because it tests knowledge and understanding of supervision-related rules.

The Proprietary Trader Principal registration counts towards the two principal requirements in Rule 1021(e). The Exchange believes that this is appropriate because the same comprehensive qualification examination, the Series 24, is required.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,[7] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,[8] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by offering a new, limited principal registration category to NASDAQ members. NASDAQ believes that the requirements of this new category should help ensure that principals who supervise proprietary traders and proprietary trading are, and will continue to be, properly trained and qualified to perform their functions, because the new Proprietary Trader Principal category is limited and tailored to persons supervising proprietary trading functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b-4(f)(6)[10] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, 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. Rule 19b-4(f)(6)[11] 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.

Under Rule 19b–4(f)(6) of the Act,[12] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. NASDAQ requests a waiver of the 30-day operative delay in order to make the new registration available near the same time as other exchanges. The Commission is waiving the 30-day operative period for this filing so that it

[5] *See* NASDAQ Rule 1032(c).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78(c)(3)(B) [sic].

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] *Id.*

will become operative upon filing.[13] The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange to make the new registration category available near the same time as other exchanges. The Commission, therefore, designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–106. 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–NASDAQ–2011–106 and should be submitted on or before September 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–20579 Filed 8–11–11; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[14] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0067]

Finding Regarding Foreign Social Insurance or Pension System—Bulgaria

AGENCY: Social Security Administration (SSA).

ACTION: Notice of finding regarding foreign social insurance or pension system—Bulgaria.

Finding: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of Section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Associate Commissioner of the Office of International Programs. Under that authority, the Associate Commissioner of the Office of International Programs has approved a finding that Bulgaria, beginning January 1, 2000, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Bulgaria to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Bulgaria.

Accordingly, it is hereby determined and found that Bulgaria has in effect, beginning January 1, 2000, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2).

In 1982, it was determined that while Bulgaria continued to meet the requirements of section 202(t)(2)(A), it no longer met the requirements of section 202(t)(2)(B). The effective date of the determination was July 7, 1981. Notice of the decision appeared in the **Federal Register** August 4, 1982. Based on this decision, citizens of Bulgaria could not meet the exception provided under section 202(t)(2) of the Social Security Act, nor could they meet the limited exceptions under section 202(t)(4).

Bulgaria instituted a new social insurance law that entered into force on January 1, 2000. The law incorporates the social insurance system as a modified first pillar. It adds a second pillar of mandatory individual accounts and a third pillar of voluntary individual accounts. The Bulgarian social insurance system provides old age, disability, and survivor's benefits, as well as other types of social insurance. Information recently obtained from Bulgaria contains detailed information on the country's social insurance system and its provisions. This information required a new determination under the section 202(t)(2) provisions.

FOR FURTHER INFORMATION CONTACT: Donna Powers, 3700 Robert Ball Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3558.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Diane K. Braunstein,

Associate Commissioner, Office of International Programs.

[FR Doc. 2011–20489 Filed 8–11–11; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on Interim Review of Eligibility of Cote d'Ivoire, Guinea, and Niger for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the interim review of the eligibility of Cote d'Ivoire, Guinea, and Niger to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under the AGOA. Cote d'Ivoire, Guinea, and Niger are currently ineligible for AGOA benefits.

DATES: Public comments are due at the Office of the U.S. Trade Representative (USTR) by noon, Monday, August 29, 2010.

ADDRESSES: USTR strongly prefers electronic submissions made at *http://www.regulations.gov*, docket number USTR–2011–0009. See ''Requirements for Submission,'' below. If you are unable to make a submission at *http://www.regulations.gov,* please contact Laura Newport, Trade Policy Staff Committee, at (202) 395–3475 to make other arrangements.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Laura Newport, Office of the U.S. Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant, U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA for countries meeting certain statutory requirements intended to prevent unlawful transshipment of such articles, if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA; and (2) section 502 of the 1974 Act. Currently, 37 countries are designated as beneficiary sub-Saharan African countries. Section 506A of the 1974 Act provides that the President shall monitor and review annually the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country. Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with an interim review of the eligibility of Cote d'Ivoire, Guinea, and Niger for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act. The eligibility criteria can be found at: 19 U.S.C. 2462 (Section 502 of the 1974 Act) and 19 U.S.C. 3703 (Section 104 of AGOA).

Requirements for Submissions: Comments must be submitted in English. To ensure the most timely and expeditious receipt and consideration of petitions, USTR has arranged to accept on-line submissions via *http://www.regulations.gov*. To submit petitions via this site, enter docket number USTR–2011–0009 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''notice'' under ''Document Type'' on search-results page and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations,gov* Web site, please consult the resources provided on the Web site by clicking on ''Help'' at the top of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''Type comment & Upload file'' field, or by attaching a document. USTR prefers comments to be submitted as attachments. When doing this, it is sufficient to type ''See attached'' in the ''Type comment & Upload file'' field. Submissions in Microsoft Word (.doc) or Adobe Acrobat (pdf) are preferred.

Persons wishing to file comments containing business confidential information must submit both a business confidential version and a public version. Persons submitting business confidential information should write ''See attached BC comments'' in the ''Type comment & Upload file'' field. Any page containing business confidential information must be clearly marked ''Business Confidential'' on the top of that page. Persons submitting a business confidential comment must also submit a separate public version of that comment with the business confidential information deleted. Persons should write ''See attached public version'' in the ''Type comment & Upload file'' field of the public submission. Submissions should not attach separate cover letters; rather, information that might appear in the cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments

to a submission in the same file as the submission itself and not as separate files.

Public versions of all documents relating to this review will be available for review no later than two weeks after the due date at *http://www.regulations.gov*, docket number USTR–2011–0009.

Donald W. Eiss,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 2011–20486 Filed 8–11–11; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2012 Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of country-by-country allocations of the Fiscal Year (FY) 2012 in-quota quantity of the tariff-rate quotas for imported raw cane sugar, refined and specialty sugar and sugar-containing products.

DATES: *Effective Date:* September 1, 2011.

ADDRESSES: Inquiries may be mailed or delivered to Julie Scott, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Julie Scott, Office of Agricultural Affairs, *telephone:* 202–395–9582 or *facsimile:* 202–395–4579.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas (TRQs) for imports of raw cane sugar and refined sugar. Pursuant to Additional U.S. Note 8 to Chapter 17 of the HTS, the United States maintains a TRQ for imports of sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On August 1, 2011, the Secretary of Agriculture (Secretary) announced the sugar program provisions for fiscal year (FY) 2012. The Secretary announced an in-quota quantity of the TRQ for raw cane sugar for FY 2012 of 1,117,195 metric tons * raw value (MTRV), which is the minimum amount to which the United States is committed under the World Trade Organization (WTO) Uruguay Round Agreements. USTR is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

Country	FY 2012 Raw cane sugar allocations (MTRV)
Argentina	46,154
Australia	89,087
Barbados	7,513
Belize	11,807
Bolivia	8,587
Brazil	155,634
Colombia	25,760
Congo	7,258
Costa Rica	16,100
Cote d'Ivoire	7,258
Dominican Republic	188,908
Ecuador	11,807
El Salvador	27,907
Fiji	9,660
Gabon	7,258
Guatemala	51,520
Guyana	12,880
Haiti	7,258
Honduras	10,733
India	8,587
Jamaica	11,807
Madagascar	7,258
Malawi	10,733
Mauritius	12,880
Mozambique	13,953
Nicaragua	22,540
Panama	31,127
Papua New Guinea	7,258
Paraguay	7,258
Peru	44,007
Philippines	144,901
South Africa	24,687
St. Kitts & Nevis	7,258
Swaziland	17,174
Thailand	15,027
Trinidad & Tobago	7,513
Uruguay	7,258
Zimbabwe	12,880

These allocations are based on the countries' historical shipments to the United States and consultations with quota-holding countries. The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin, and certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

On August 1, 2011, the Secretary also announced the establishment of the in-quota quantity of the FY 2012 refined sugar TRQ at 112,718 MTRV for which the sucrose content, by weight in the dry state, must have a polarimeter reading of 99.5 degrees or more. This amount includes the minimum level to which the United States is committed under the WTO Uruguay Round Agreements (22,000 MTRV of which 1,656 MTRV is reserved for specialty sugar) and an additional 90,718 MTRV for specialty sugars. Based on consultations with quota-holding countries, USTR is allocating a total of 12,050 MTRV of refined sugar to Canada and 8,294 MTRV of refined sugar to be administered on a first-come, first-served basis.

Imports of all specialty sugar will be administered on a first-come, first-served basis in five tranches. The Secretary has announced that the total in-quota quantity of specialty sugar will be the 1,656 MTRV included in the WTO minimum plus an additional 90,718 MTRV. The first tranche of 1,656 MTRV will open October 12, 2011. All types of specialty sugars are eligible for entry under this tranche. The second tranche of 33,565 MTRV will open on October 26, 2011. The third, fourth, and fifth tranches of 19,051 MTRV each will open on January 11, 2012, April 11, 2012 and July 11, 2012, respectively. The second, third, fourth and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

With respect to the in-quota quantity of 64,709 metric tons (MT) of the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to chapter 17 of the HTS, USTR is allocating 59,250 MT to Canada. The remainder, 5,459 MT, of the in-quota quantity is available for other countries on a first-come, first-served basis.

In response to increased tightness in the U.S. raw cane sugar market, USDA also announced that it will open its raw cane sugar TRQs on September 1, 2011, a month earlier than the usual entry date of October 1. This early entry date does not apply to TRQs for refined and specialty sugar and sugar-containing products.

* *Conversion factor:* 1 metric ton = 1.10231125 short tons.

Ronald Kirk,

United States Trade Representative.

[FR Doc. 2011–20480 Filed 8–11–11; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Wednesday, September 21, 2011. Written comments are due by noon, Monday, September 26, 2011. A hearing will be held in Washington, DC, on Wednesday, October 5, 2011.

ADDRESSES: Notifications of intent to testify and written comments should be submitted electronically via the Internet at *http://www.regulations.gov.* For alternatives to on-line submissions, please contact Laura Newport, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Laura Newport, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, (202) 395–3900, or Katherine C. Tai, Chief Counsel for China Enforcement, (202) 395–3150.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (*http://www.ustr.gov/webfm_send/2596*).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm,* or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (*e.g.,* tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (*e.g.,* subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (*e.g.,* transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the United States' view that China should be held accountable as a full participant in, and beneficiary of, the international trading system, USTR requests that interested persons specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force.

Written comments must be received no later than noon, Monday, September 26, 2011.

A hearing will be held on Wednesday, October 5, 2011, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next business day. Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Wednesday, September 21, 2011. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) ''China's WTO Compliance.''

In order to ensure the most timely and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit comments via *http://www.regulations.gov,* enter docket number USTR–2011–0005 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''General Comments'' field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''General Comments'' field.

Submit any documents containing business confidential information with a file name beginning with the characters ''BC''. Submit, as a separate submission, a public version of the submission with a file name beginning with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. For comments that contain no business confidential information, the file name should begin with the character ''P'', followed by the name of the person or

entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Ms. Newport prior to delivery for the receipt of such submissions. Ms. Newport may be contacted at (202) 395–3475.

General information concerning USTR may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Donald W. Eiss,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 2011–20483 Filed 8–11–11; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers and Reports on Sanitary and Phytosanitary and Standards-Related Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241), the Office of the United States Trade Representative (USTR) is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested persons to submit comments to assist it in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the NTE.

Once again, the TPSC is requesting that comments on standards-related measures and sanitary and phytosanitary (SPS) measures that create barriers to U.S. exports be submitted separately from other NTE comments. This will assist USTR in updating two reports issued in 2011 in conjunction with the release of the NTE highlighting SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports. These reports were published as the 2011 Report on Sanitary and Phytosanitary Measures (2011 SPS Report) and the 2011 Report on Technical Barriers to Trade (2011 TBT Report) respectively.

The TPSC invites written comments from the public on issues that USTR should examine in preparing the NTE and the reports on SPS and standards-related measures.

DATES: Public comments are due not later than October 4, 2011.

ADDRESSES: Submissions should be made via the Internet at *http://www.regulations.gov* under the following dockets (based on the subject matter of the submission):

SPS Measures: USTR–2011–0006.

Standards-Related Measures: USTR–2011–0007.

All Other Measures: USTR–USTR–2011–0008.

For alternatives to on-line submissions please contact Laura Newport at USTR (202–395–3475). The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the NTE or on submitting comments in response to this notice should be directed to Laura Newport at (202) 395–3475. Questions regarding the SPS report or substantive questions concerning comments on SPS measures should be directed to Jane Doherty, Director of Sanitary and Phytosanitary Affairs, USTR (202–395–6127). Questions regarding the report on standards-related measures or substantive questions concerning comments on those measures should be directed to Jeff Weiss, Senior Director, Technical Barriers to Trade, USTR (202–395–4498).

SUPPLEMENTARY INFORMATION: The NTE sets out an inventory of the most important foreign barriers affecting U.S. exports of goods and services, U.S. foreign direct investment, and protection of intellectual property rights. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws and strengthening the rules-based trading system. The 2011 NTE, SPS, and TBT Reports may be found on USTR's Internet Home Page (*http://www.ustr.gov*) under the tab ''Reports''.

To ensure compliance with the NTE's statutory mandate and the Obama Administration's commitment to focus on the most significant foreign trade barriers, USTR will be guided by the existence of active private sector interest in deciding which restrictions to include in the NTE and the reports on SPS and standards-related measures.

Topics on which the TPSC Seeks Information: To assist USTR in preparing the NTE and the reports on SPS and standards-related measures, commenters should submit information related to one or more of the following categories of foreign trade barriers:

(1) Import policies (*e.g.,* tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) SPS measures;

(3) Standards-related measures (including standards, technical regulations, and conformity assessment procedures);

(4) Government procurement restrictions (*e.g.,* ''buy national policies'' and closed bidding);

(5) Export subsidies (*e.g.,* export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(6) Lack of intellectual property protection (*e.g.,* inadequate patent, copyright, and trademark regimes);

(7) Services barriers (*e.g.,* limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals);

(8) Investment barriers (*e.g.,* limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties);

(9) Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets;

(10) Trade restrictions affecting electronic commerce (*e.g.,* tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

(11) Other barriers (*e.g.,* barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector).

Reports on SPS and Standards-Related Measures: On March 30, 2011, USTR published two reports in conjunction with the release of the NTE focusing on foreign trade barriers—one on SPS measures and the other on standards-related measures. These reports serve as tools to bring greater

attention and focus to resolving SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant foreign barriers to U.S. exports. USTR plans to use comments on SPS and standards-related measures (items 2 and 3 in the list above) submitted pursuant to this notice in producing these two reports once again. To help USTR identify SPS and standards-related measures to include in the reports, comments concerning those measures should be submitted separately from those addressing other foreign trade barriers. (See below).

The following information describing SPS and standards-related measures may help commenters to file submissions on particular foreign trade barriers under the appropriate docket.

SPS Measures: Generally, SPS measures are measures applied to protect the life or health of humans, animals, and plants from risks arising from additives, contaminants, pests, toxins, diseases, or disease-carrying and causing organisms. SPS measures can take such forms as specific product or processing standards, requirements for products to be produced in disease-free areas, quarantine regulations, certification or inspection procedures, sampling and testing requirements, health-related labeling measures, maximum permissible pesticide residue levels, and prohibitions on certain food additives.

Standards-Related Measures: Standards-related measures comprise standards, technical regulations, and conformity assessment procedures, such as mandatory process or design standards, labeling or registration requirements, and testing or certification procedures. Standards-related measures can be applied not only to industrial products but to agricultural products as well, such as food nutrition labeling schemes and food quality or identity requirements.

For further information on SPS and standards-related measures and additional detail on the types of comments that would assist USTR in identifying and addressing significant trade-restrictive SPS and standards-related measures, please see ''Supporting & Related Materials'' under dockets USTR–USTR–2011–0006 and USTR–USTR–2011–0007 at *http://www.regulations.gov.* The 2011 SPS and TBT Reports also contain extensive information on SPS and standards-related measures that commenters may find useful in preparing comments in response to this notice.

In responding to this notice with respect to any of the three reports, commenters should place particular emphasis on any practices that may violate U.S. trade agreements. The TPSC is also interested in receiving new or updated information pertinent to the barriers covered in the 2011 NTE and the reports on SPS and standards-related measures as well as information on new barriers. If USTR does not include in the NTE or the reports on SPS and standards-related measures information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

Estimate of Increase in Exports: Each comment should include an estimate of the potential increase in U.S. exports that would result from removing any foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Estimates should be expressed within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. These estimates will help USTR conduct comparative analyses of a barrier's effect over a range of industries.

Requirements for Submissions: Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate submission for each country. Comments addressing SPS or standards-related measures should be submitted separately from comments on other trade barriers.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under one of the following dockets (depending on the subject of the comment):

SPS Measures: USTR–USTR–2011–0006.

Standards-Related Measures: USTR–2011–0007.

All Other Measures: USTR–2011–0008.

To find these dockets, enter the pertinent docket number in the ''Enter Keyword or ID'' window at the *http://www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with that docket number. Find a reference to this notice by selecting ''Notices'' under ''Document Type'' on the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the ''Help'' tab.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, please identify the name of the country to which the submission pertains in the ''Comments'' field. For example: ''See attached comment for (name of country)''. If the comment is related to SPS or standards-related measures, type ''See attached comment on SPS measures for (name of country)'' or ''See attached comment on standards-related measures for (name of country)''. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Comments'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. The top of any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL''. Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. If a comment contains no business confidential information, the file name should begin with the character ''P'', followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Public inspection of submissions: Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* Web site by entering the relevant docket

number in the search field on the home page.

Donald W. Eiss,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 2011–20481 Filed 8–11–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2011–0107]

Notice of Funding Availability for the Department of Transportation's National Infrastructure Investments Under the Full-Year Continuing Appropriations, 2011; and Request for Comments

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice of Funding Availability, Request for Comments.

SUMMARY: This notice announces the availability of funding and requests proposals for the Department of Transportation's National Infrastructure Investments. In addition, this notice announces selection criteria and pre-application and application requirements for the National Infrastructure Investments.

On July 1, 2011 the Department of Transportation published an interim notice announcing the availability of funding for the Department of Transportation's National Infrastructure Investments, or ''TIGER Discretionary Grants,'' project selection criteria and pre-application and application requirements for these grants. The interim notice also requested comments on the project selection criteria and pre-application and application requirements. The Department considered the comments that were submitted in accordance with the interim notice and decided to make no substantive revisions to the interim notice based on those comments. However, the Department has decided to make minor revisions to the interim notice, to provide additional information to potential applicants on the project readiness characteristics that the Department considers when evaluating an application (see section I(b) and Appendix C). The Department has also updated the point-of-contact information for program staff that should be contacted with any questions regarding the application process for these grants.

On April 15, 2011, the President signed the Full-Year Continuing Appropriations, 2011 (Div. B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–010, Apr. 15, 2011)) (''FY 2011 Continuing Appropriations Act''). The FY 2011 Continuing Appropriations Act appropriated $526.944 million to be awarded by the Department of Transportation (''DOT'') for National Infrastructure Investments. This appropriation is similar, but not identical to the appropriation for the Transportation Investment Generating Economic Recovery, or ''TIGER Discretionary Grant'', program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act''), and the National Infrastructure Investments or ''TIGER II Discretionary Grant'' program under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (''FY 2010 Appropriations Act''). Because of the similarity in program structure, DOT has referred to the grants for National Infrastructure Investments under the FY 2010 Appropriations Act as ''TIGER II Discretionary Grants''. Given that funds have now been appropriated for these similar programs in three separate statutes, DOT is referring to the grants for National Infrastructure Investments under the FY 2011 Continuing Appropriations Act simply as ''TIGER Discretionary Grants.'' As with the TIGER and TIGER II programs, funds for the FY2011 TIGER program are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region. Through this notice, DOT is soliciting applications for TIGER Discretionary Grants.

In the event that this solicitation does not result in the award and obligation of all available funds, DOT may decide to publish an additional solicitation(s).

DATES: Pre-applications must be submitted by October 3, 2011, at 5 p.m. EDT (the ''Pre-Application Deadline''). Final applications must be submitted through Grants.gov by October 31, 2011, at 5 p.m. EDT (the ''Application Deadline''). The DOT pre-application system will open on or before September 9, 2011, to allow prospective applicants to submit pre-applications. Subsequently, the Grants.gov ''Apply'' function will open on October 5, 2011, allowing applicants to submit applications. While applicants are encouraged to submit pre-applications in advance of the Pre-Application Deadline, pre-applications will not be reviewed until after the pre-application deadline. Similarly, while applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and awards will not be made, until after the Application Deadline.

ADDRESSES: Pre-applications must be submitted electronically to DOT and applications must be submitted electronically through Grants.gov. Only pre-applications received by DOT and applications received through Grants.gov will be deemed properly filed. Instructions for submitting pre-applications to DOT and applications through Grants.gov are included in Section VII *(Pre-Application and Application Cycle).*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice please contact the TIGER Discretionary Grant program staff via e-mail at *TIGERGrants@dot.gov,* or call Howard Hill at 202–366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will regularly post answers to questions and requests for clarifications on DOT's Web site at *http://www.dot.gov/TIGER.*

SUPPLEMENTARY INFORMATION: This notice is substantially similar to the Final notice published for the TIGER II Discretionary Grant program in the **Federal Register** on June 1, 2010. However, there are a few significant differences that applicants should be aware of. These differences are as follows:

1. Unlike the FY 2010 Appropriations Act, the FY 2011 Continuing Appropriations Act does not provide any funding for projects solely for the planning, preparation, or design of capital projects (''TIGER Planning Grants''); however these activities may be eligible to the extent that they are part of an overall construction project that receives TIGER Discretionary Grants funding.

2. As specified in section VI of this notice, any applicant that is applying for a TIGER TIFIA Payment must also submit a TIFIA letter of interest along with their application.

3. As specified in section VII(A) of this notice, eligible applicants may submit, as a lead applicant, no more than three applications for consideration. However, multistate applications will not count towards the lead applicant's three application limit. Additionally, applicants may be identified as a partnering agency on the application of another lead applicant and such an application will not count towards a partnering applicant's three application limit as a lead applicant.

Other than these differences, and minor edits made to conform the notice to the factual circumstances of this round of TIGER funding, there have been no material changes made to the notice. This final notice includes minor revisions to the interim notice, to provide additional information to potential applicants on the project readiness characteristics that the Department considers when evaluating an application (see section I(b) and Appendix C). The Department has also updated the point-of-contact information for program staff that should be contacted with any questions regarding the application process for these grants. Each section of this notice contains information and instructions relevant to the application process for these TIGER Discretionary Grants and prospective applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications.

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I. Background

Recovery Act TIGER and Fiscal Year 2010 TIGER II Discretionary Grants

On February 17, 2009, the President of the United States signed the Recovery Act, which appropriated $1.5 billion of discretionary grant funds to be awarded by DOT for capital investments in surface transportation infrastructure. DOT has referred to these grants as Grants for Transportation Investment Generating Economic Recovery or ''TIGER Discretionary Grants.'' DOT solicited applications for TIGER Discretionary Grants through a notice of funding availability published in the **Federal Register** on June 17, 2009 (an interim notice was published on May 18, 2009). Applications for TIGER Discretionary Grants were due on September 15, 2009 and DOT received over 1,400 applications with funding requests totaling almost $60 billion. Funding for 51 projects totaling nearly $1.5 billion was announced on February 17, 2010.

On December 16, 2009, the President signed the FY 2010 Appropriations Act that appropriated $600 million to DOT for National Infrastructure Investments using language that was similar, but not identical, to the language in the Recovery Act authorizing the TIGER Discretionary Grants. DOT has referred to those grants for National Infrastructure Investments as TIGER II Discretionary Grants.

The FY 2010 Appropriations Act permitted DOT to use an amount not to exceed $35 million of the available TIGER II funds for projects that involved solely the planning, preparation, or design of Eligible Projects, and not their construction (''TIGER II Planning Grants''). The Recovery Act did not explicitly provide funding for similar activities under the TIGER Discretionary Grant program.

DOT solicited applications for TIGER II Discretionary Grants through a notice of funding availability published in the **Federal Register** on June 1, 2010 (an interim notice was published on April 26, 2010). Applications for TIGER II Discretionary Grants were due on August 23, 2010 and nearly 1,700 applications were received with funding requests totaling about $21 billion. Funding awards for 42 capital projects totaling nearly $557 million were announced on October 20, 2010. Grant announcements ranged from $1.01 million to $47.6 million for individual capital projects, with an average award size of approximately $13.25 million; the median award amount was $10.5 million. Additionally, funding for 33 planning projects totaling nearly $28 million was announced on October 20, 2010. TIGER II Planning Grant announcements ranged from $85 thousand to $2.8 million for individual projects, with an average award size of approximately $835 thousand; the median award size was $720 thousand. Fourteen TIGER II Planning Grant recipients received HUD Sustainable Community Challenge Grants that were also announced on October 20, 2010. Projects were selected for funding based on their alignment with the selection criteria specified in the June 1, 2010, **Federal Register** notice for the TIGER II Discretionary Grant program.

On April 15, 2011, the President signed the FY 2011 Continuing Appropriations Act. This Act appropriated $526.944 million to DOT for National Infrastructure Investments using language that is similar, but not identical to the language in the FY 2010 Appropriations Act authorizing the TIGER II Discretionary Grants. DOT is referring to these grants for National Infrastructure Investments as TIGER Discretionary Grants.

The most significant difference between the 2010 and 2011 appropriations is that there is no funding available for TIGER Planning Grants in the 2011 Act.

Section 1101 of the FY 2011 Continuing Appropriations Act, Title I—General Provisions, states that the appropriations are for such amounts as may be necessary, at the level specified and under the authority and conditions provided in applicable appropriations Act for fiscal year 2010, for projects or activities for which appropriations, funds, or other authority were made available under the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Because of this general provision in the FY 2011 Continuing Appropriations Act, DOT is applying the authority and conditions outlined in the following section.

FY 2011 TIGER Discretionary Grants

Like the TIGER and TIGER II Discretionary Grants, this year's TIGER Discretionary Grants are for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region. Key requirements of the TIGER Discretionary Grant program are summarized below, and material differences from the previous TIGER Discretionary Grant programs are highlighted.

''Eligible Applicants'' for TIGER Discretionary Grants are State, local, and Tribal governments, including U.S. territories, Tribal governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of State or local governments, and multi-State or multi-jurisdictional groups applying through a single lead applicant (for multi-jurisdictional groups, each member of the group, including the lead applicant, must be an otherwise eligible applicant as defined in this paragraph).

Projects that are eligible for TIGER Discretionary Grants under the FY 2011 Continuing Appropriations Act (''Eligible Projects'') include, but are not limited to: (1) Highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, United States Code, apply to all projects receiving funds. This

description of Eligible Projects is identical to the description of eligible projects under the TIGER II Discretionary Grant program.[1]

However, while in the past applicants could submit as many applications as they wished, for the Fiscal Year 2011 TIGER Discretionary Grant Program, to help ensure that applicants submit only those applications that are most likely to align well with DOT's selection criteria, each applicant may submit no more than three applications for consideration. While applications may include requests to fund more than one project, applicants should not bundle together unrelated projects in the same application for purposes of avoiding the three application limit that applies to each applicant. Please note that the three application limit applies only to applications where the applicant is the lead applicant, and there is no limit on applications for which an applicant can be listed as a partnering agency. Also, DOT will not count any application for a multistate project against the three application limit to the extent multiple states are partnering to submit the application.

The FY 2011 Continuing Appropriations Act requires a new solicitation of applications and, therefore, any unsuccessful applicant for a TIGER or TIGER II Discretionary Grant that wishes to be considered for a TIGER Discretionary Grant this year must reapply according to the procedures in this notice. Additionally, TIGER II planning grant recipients must reapply to be considered for a TIGER Discretionary Grant for capital funding, if they meet the eligibility criteria and schedule requirements for TIGER and are ready to proceed to the construction phase of the project.

The FY 2011 Continuing Appropriations Act specifies that TIGER Discretionary Grants may be not less than $10 million (except in rural areas) and not greater than $200 million. Based on DOT's experience with the TIGER and TIGER II Discretionary Grant programs, it is unlikely that the $200 million maximum grant size for this year's TIGER Discretionary Grant program will be reached for any project. The FY 2011 Continuing Appropriations Act, like the FY 2010 Appropriations Act, does not provide authority to waive the minimum $10 million grant size for TIGER Discretionary Grants. For projects located in rural areas (as defined in section V (*Projects in Rural Areas*)), the minimum TIGER Discretionary Grant size is $1 million, as it was in the FY 2010 Appropriations Act. The term ''grant'' in the provision of the FY 2011 Continuing Appropriations Act specifying a minimum grant size does not include TIGER TIFIA Payments, as defined below.

Pursuant to the FY 2011 Continuing Appropriations Act, no more than 25 percent of the funds made available for TIGER Discretionary Grants (or $131.736 million) may be awarded to projects in a single State. This maximum State share is consistent with the maximum State share under the TIGER II Discretionary Grants program. The comparable figure for TIGER II Discretionary Grants was also 25 percent (or $150 million).

The FY 2011 Continuing Appropriations Act directs that not less than $140 million of the funds provided for TIGER Discretionary Grants is to be used for projects located in rural areas. The comparable amount set aside for rural areas under the FY 2010 Appropriations Act was also $140 million. In awarding TIGER Discretionary Grants pursuant to the FY 2011 Continuing Appropriations Act, DOT must take measures to ensure an equitable geographic distribution of grant funds, an appropriate balance in addressing the needs of urban and rural areas and the investment in a variety of transportation modes. The FY 2010 Appropriations Act included the same provisions for the TIGER II Discretionary Grant program.

TIGER Discretionary Grants may be used for up to 80 percent of the costs of a project, but priority must be given to projects for which Federal funding is required to complete an overall financing package and projects can increase their competitiveness by demonstrating significant non-Federal contributions.[2] The FY 2010 Appropriations Act included the same priority for TIGER II Discretionary Grants. Once again for this year's TIGER Discretionary Grants, DOT may increase the Federal share above 80 percent only for projects located in rural areas, in which case DOT may fund up to 100 percent of the costs of a project. Therefore, for projects not located in rural areas, based on the statutory requirements of at least 20 percent non-Federal cost share and a minimum grant size of $10 million, the minimum total project size for an eligible project is $12.5 million (where the minimum $10 million TIGER Discretionary Grant request represents 80 percent of the total project cost). The minimum total project size for an eligible project in a rural area is 1 million (where the entire project cost is funded with a TIGER Discretionary Grant). However, the statutory requirement to give priority to projects that use Federal funds to complete an overall financing package applies to projects located in rural areas as well, and projects located in rural areas can increase their competitiveness for purposes of the TIGER program by demonstrating significant non-Federal financial contributions.

The Recovery Act required DOT to give priority to projects that were expected to be completed by February 17, 2012. Like the FY 2010 Appropriations Act, the FY 2011 Continuing Appropriations Act does not include any similar requirements for the TIGER Discretionary Grants, although this year's TIGER funds are only available for obligation through September 30, 2013. The limited amount of time for which the funds will be made available means that DOT will consider the extent to which a project is ready to proceed with obligation of grant funds when evaluating applications.

The Recovery Act emphasized the generation of near-term economic effects from expenditures on project costs, such as construction job creation. However, the FY 2010 and FY 2011 Continuing Appropriations Acts do not include explicit emphasis on job creation and instead focus more broadly on the impact of projects on the Nation, a metropolitan area, or a region including the medium- and long-term benefits that would accrue post-project completion. Therefore, in all cases, TIGER Discretionary Grant applications will need to be competitive on the merits of the medium- to long-term impacts of the projects themselves, as demonstrated by a project's alignment with the Long-

[1] Consistent with the FY 2011 Continuing Appropriations Act, DOT will apply the following principles in determining whether a project is eligible as a capital investment in surface transportation: (1) Surface transportation facilities generally include roads, highways and bridges, ports, freight and passenger railroads, transit systems, and projects that connect transportation facilities to other modes of transportation; and (2) surface transportation facilities also include any highway or bridge project eligible under title 23, U.S.C., or public transportation project eligible under chapter 53 of title 49, U.S.C. Please note that the Department may use a TIGER Discretionary Grant to pay for the surface transportation components of a broader project that has non-surface transportation components, and applicants are encouraged to apply for TIGER Discretionary Grants to pay for the surface transportation components of these projects.

[2] DOT will consider any non-Federal funds for purposes of meeting the 20 percent match requirement, whether such funds are contributed by the public sector (State or local) or the private sector; however, DOT will not consider funds already expended at the time of the award for purposes of meeting the 20 percent match requirement.

Term Outcomes selection criterion described in Section II(A) *(Selection Criteria)* below. However, because communities nationwide continue to face difficult economic circumstances, including high unemployment, DOT will also continue to incorporate near-term impacts like job creation in its evaluation of TIGER applications, as demonstrated by a project's alignment with the Job Creation & Near-Term Economic Activity selection criterion described in Section II(A) below. Consideration of near-term benefits will apply particularly in the case of projects that will employ people in Economically Distressed Areas as discussed in more detail in Section II(A) below.

The FY 2011 Continuing Appropriations Act allows for an amount not to exceed $150 million of the $526.944 million to be used to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of 1998 (''TIFIA'') program, a Federal credit assistance program, if it would further the purposes of the TIGER Discretionary Grant program. DOT is referring to these payments as ''TIGER TIFIA Payments.'' The FY 2010 Appropriations Act also authorized DOT to use up to $150 million of the amount available for TIGER II Discretionary Grants for similar purposes.

Based on the subsidy amounts required for projects in the TIFIA program's existing portfolio, DOT estimates that $150 million of TIGER TIFIA Payments could support approximately $1.5 billion in TIFIA credit assistance. The amount of budget authority required to support TIFIA credit assistance is calculated on a project-by-project basis. Applicants for TIGER TIFIA Payments should submit an application pursuant to this notice and a separate TIFIA letter of interest, as described below in Section VI *(TIGER TIFIA Payments).* Unless otherwise noted, or the context requires otherwise, references in this notice to TIGER Discretionary Grants include TIGER TIFIA Payments.

DOT reserves the right to offer a TIGER TIFIA Payment to an applicant that applied for a TIGER Discretionary Grant even if DOT does not choose to fund the requested TIGER Discretionary Grant and the applicant did not specifically request a TIGER TIFIA Payment. Therefore, as described below in Section VI *(TIGER TIFIA Payments),* applicants for TIGER Discretionary Grants, particularly applicants that require a substantial amount of funds to complete a financing package, should indicate whether or not they have considered applying for a TIGER TIFIA Payment. To the extent an applicant thinks that TIFIA may be a viable option for the project, applicants should provide a brief description of a project finance plan that includes TIFIA credit assistance and identifies a source of revenue which may be available to support the TIFIA credit assistance.

The FY 2011 Continuing Appropriations Act provides that the Secretary of Transportation may retain up to $25 million of the $526.944 million to fund the award and oversight of TIGER Discretionary Grants. Portions of the $25 million may be transferred for these purposes to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, and the Federal Maritime Administration.

The purpose of this notice is to solicit applications for TIGER Discretionary Grants.

TIGER Discretionary Grants

II. Selection Criteria and Guidance on Application of Selection Criteria

This section specifies the criteria that DOT will use to evaluate applications for TIGER Discretionary Grants. The criteria incorporate the statutory eligibility requirements for this program, which are specified in this notice as relevant. This section is divided into two parts. Part A *(Selection Criteria)* specifies the criteria that DOT will use to rate projects. Additional guidance about how DOT will apply these criteria, including illustrative metrics and examples, is provided in Part B *(Additional Guidance on Selection Criteria).*

A. Selection Criteria

TIGER Discretionary Grants will be awarded based on the selection criteria as outlined below. There are two categories of selection criteria, ''Primary Selection Criteria'' and ''Secondary Selection Criteria.''

The Primary Selection Criteria include (1) Long-Term Outcomes and (2) Job Creation & Near-Term Economic Activity. The Secondary Selection Criteria include (1) Innovation and (2) Partnership. The Primary Selection Criteria are intended to capture the primary objective of the TIGER provisions of the FY 2011 Continuing Appropriations Act, which is to invest in infrastructure projects that will have a significant impact on the Nation, a metropolitan area, or a region. The Secondary Selection Criteria are intended to capture the benefits of new and/or innovative approaches to achieving this programmatic objective.

1. Primary Selection Criteria

(a) Long-Term Outcomes

DOT will give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. Applications that do not demonstrate a likelihood of significant long-term benefits in this criterion will not proceed in the evaluation process. The following types of long-term outcomes will be given priority:

(i) *State of Good Repair:* Improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize life-cycle costs.

(ii) *Economic Competitiveness:* Contributing to the economic competitiveness of the United States over the medium- to long-term.

(iii) *Livability:* Fostering livable communities through place-based policies and investments that increase transportation choices and access to transportation services for people in communities across the United States.

(iv) *Environmental Sustainability:* Improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and benefitting the environment.

(v) *Safety:* Improving the safety of U.S. transportation facilities and systems.

(b) Job Creation and Near-Term Economic Activity

While the TIGER Discretionary Grant program is not a Recovery Act program, job creation and near-term economic activity remain a top priority of this Administration; therefore, DOT will give priority (as it did for the TIGER and TIGER II Discretionary Grant programs) to projects that are expected to quickly create and preserve jobs and promote rapid increases in economic activity, particularly jobs and activity that benefit economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161) (''Economically Distressed Areas'').[3]

[3] While Economically Distressed Areas are typically identified under the Public Works and Economic Development Act at the county level, for the purposes of this program DOT will consider regions, municipalities, smaller areas within larger communities, or other geographic areas to be Economically Distressed Areas if an applicant can demonstrate that any such area otherwise meets the requirements of an Economically Distressed Area as defined in section 301 of the Public Works and Economic Development Act of 1965.

2. Secondary Selection Criteria

(a) Innovation

DOT will give priority to projects that use innovative strategies to pursue the long-term outcomes outlined above.

(b) Partnership

DOT will give priority to projects that demonstrate strong collaboration among a broad range of participants and/or integration of transportation with other public service efforts.

B. Additional Guidance on Selection Criteria

The following additional guidance explains how DOT will evaluate each of the selection criteria identified above in Section II(A) *(Selection Criteria).* Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits specified below in Section VII(D) (*Length of Application*).

1. Primary Selection Criteria

(a) Long-Term Outcomes

In order to measure a project's alignment with this criterion, DOT will assess the public benefits generated by the project, as measured by the extent to which a project produces one or more of the following outcomes.

(i) *State of Good Repair:* In order to determine whether the project will improve the condition of existing transportation facilities or systems, including whether life-cycle costs will be minimized, DOT will assess (i) whether the project is part of, or consistent with, relevant State, local or regional efforts and plans to maintain transportation facilities or systems in a state of good repair, (ii) whether an important aim of the project is to rehabilitate, reconstruct or upgrade surface transportation assets that, if left unimproved, threaten future transportation network efficiency, mobility of goods or people, or economic growth due to their poor condition, (iii) whether the project is appropriately capitalized up front and uses asset management approaches that optimize its long-term cost structure, and (iv) the extent to which a sustainable source of revenue is available for long-term operations and maintenance of the project. The application should include any quantifiable metrics of the facility or system's current condition and performance and, to the extent possible, projected condition and performance, with an explanation of how the project will improve the facility or system's condition, performance and/or long-term cost structure, including calculations of avoided operations and maintenance costs and associated delays.

(ii) *Economic Competitiveness:* In order to determine whether a project promotes the economic competitiveness of the United States, DOT will assess whether the project will measurably contribute over the long term to growth in the productivity of the American economy. For purposes of aligning a project with this outcome, applicants should provide evidence of how improvements in transportation outcomes (such as time savings and operating cost savings) translate into long-term economic productivity benefits. These long-term economic benefits that are provided by the completed project are different from the near-term economic benefits of construction that are captured in the Job Creation & Near-Term Economic Activity criterion. In weighing long-term economic competitiveness benefits, applicants should describe how the project supports increased long-term efficiency and productivity.

Priority consideration will be given to projects that: (i) Improve long-term efficiency, reliability or cost-competitiveness in the movement of workers or goods (including, but not limited to, projects that have a significant effect on reducing the costs of transporting export cargoes), or (ii) make improvements that increase the economic productivity of land, capital or labor at specific locations, particularly Economically Distressed Areas. Applicants may propose other methods of demonstrating a project's contribution to the economic competitiveness of the country and such methods will be reviewed on a case-by-case basis.

Economic competitiveness may be demonstrated by the project's ability to increase the efficiency and effectiveness of the transportation system through integration or better use of all existing transportation infrastructure (which may be evidenced by the project's involvement with or benefits to more than one mode and/or its compatibility with and preferably augmentation of the capacities of connecting modes and facilities), but only to the extent that these enhancements lead to the economic benefits that are identified in the opening paragraph of this section.

For purposes of demonstrating economic benefits, applicants should estimate National-level or region-wide economic benefits on productivity and production (*e.g.,* reduced shipping costs or travel times for U.S. exports originating both inside and outside of the region), and should net out those benefits most likely to result in transfers of economic activity from one localized area to another. Therefore, in estimating local and regional benefits, applicants should consider net increases in economic productivity and benefits, and should take care not to include economic benefits that are being shifted from one location in the United States to another location. Highly localized benefits will receive the most consideration under circumstances where such benefits are most likely to improve an Economically Distressed Area (as defined herein) or otherwise improve access to more productive employment opportunities for under-employed and disadvantaged populations.

Finally, the TIGER program strives to promote long-term economic growth in a manner that will be sustainable for generations to come. Therefore, for projects designed to enhance economic competitiveness, applicants should also provide evidence that the project will achieve the goals of this outcome in an environmentally sustainable manner. To satisfy this condition, applicants should reference the fourth criterion in this Section II(B) ''Environmental Sustainability'' for more information on what features promote sustainable growth and be sure to address the extent to which sustainability features are incorporated into the proposed project's economic impact.

(iii) *Livability:* Livability investments are projects that not only deliver transportation benefits, but are also designed and planned in such a way that they have a positive impact on qualitative measures of community life. This element of long-term outcomes delivers benefits that are inherently difficult to measure. However, it is implicit to livability that its benefits are shared and therefore magnified by the number of potential users in the affected community. Therefore, descriptions of how projects enhance livability should include a description of the affected community and the scale of the project's impact as measured in person-miles traveled or number of trips affected. In order to determine whether a project improves the quality of the living and working environment of a community, DOT will consider whether the project furthers the six livability principles developed by DOT with HUD and EPA

as part of the Partnership for Sustainable Communities, which are listed fully at *http://www.dot.gov/affairs/2009/dot8009.htm.* For this criterion, the Department will give particular consideration to the first principle, which prioritizes the creation of affordable and convenient transportation choices.[4] Specifically, DOT will qualitatively assess whether the project:

(1) Will significantly enhance or reduce the average cost of user mobility through the creation of more convenient transportation options for travelers;

(2) Will improve existing transportation choices by enhancing points of modal connectivity, increasing the number of modes accommodated on existing assets, or reducing congestion on existing modal assets;

(3) Will improve accessibility and transport services for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities, or will make goods, commodities, and services more readily available to these groups; and/or

(4) Is the result of a planning process which coordinated transportation and land-use planning decisions and encouraged community participation in the process.

Livability improvements may include projects for new or improved biking and walking infrastructure. Particular attention will be paid to the degree to which such projects contribute significantly to broader traveler mobility through intermodal connections, enhanced job commuting options, or improved connections between residential and commercial areas. Projects that appear designed primarily as isolated recreational facilities and do not enhance traveler mobility as described above will not be funded.

(iv) *Environmental Sustainability:* In order to determine whether a project promotes a more environmentally sustainable transportation system, DOT will assess the project's ability to:

(1) Improve energy efficiency, reduce dependence on oil and/or reduce greenhouse gas emissions (applicants are encouraged to provide quantitative information regarding expected reductions in emissions of CO_2 or fuel consumption as a result of the project, or expected use of clean or alternative sources of energy; projects that demonstrate a projected decrease in the movement of people or goods by less energy-efficient vehicles or systems will be given priority under this factor); and

(2) Maintain, protect or enhance the environment, as evidenced by its avoidance of adverse environmental impacts (for example, adverse impacts related to air or water quality, wetlands, and endangered species) and/or by its environmental benefits (for example, improved air quality, wetlands creation or improved habitat connectivity).

Applicants are encouraged to provide quantitative information that validates the existence of substantial transportation-related costs related to energy consumption and adverse environmental effects and evidence of the extent to which the project will reduce or mitigate those costs.

(v) *Safety:* In order to determine whether the project improves safety, DOT will assess the project's ability to reduce the number, rate and consequences of surface transportation-related crashes, injuries, and fatalities among drivers and/or non-drivers in the United States or in the affected metropolitan area or region, and/or the project's contribution to the elimination of highway/rail grade crossings, the protection of pipelines, or the prevention of unintended release of hazardous materials.

Evaluation of Expected Project Costs and Benefits: DOT believes that benefit-cost analysis (''BCA''), including the monetization and discounting of costs and benefits in a common unit of measurement in present-day dollars, is an important discipline. For BCA to yield useful results, full consideration of costs and benefits is necessary. These include traditionally quantified fuel and travel time savings as well as reductions in greenhouse gas emissions, water quality impacts, public health effects, and other costs and benefits that are more indirectly related to vehicle-miles or that are harder to measure. In addition, BCA should attempt to measure the indirect effects of transportation investments on land use and on the portions of household budgets spent on transportation. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between, alternative transportation investments. DOT has a responsibility under Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233, to base infrastructure investments on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures.

Therefore, applicants for TIGER Discretionary Grants are generally required to identify, quantify, and compare expected benefits and costs, subject to the following qualifications:

All applicants will be expected to prepare an analysis of benefits and costs; however, DOT understands that the level of expense that can be expected in these analyses for surveys, travel demand forecasts, market forecasts, statistical analyses, and so on will be less for smaller projects than for larger projects. The level of resources devoted to preparing the benefit-cost analysis should be reasonably related to the size of the overall project and the amount of grant funds requested in the application. Any subjective estimates of benefits and costs should still be quantified, and applicants are expected to provide whatever evidence they have available to lend credence to their subjective estimates. Estimates of benefits should be presented in monetary terms whenever possible; if a monetary estimate is not possible, then at least a quantitative estimate (in physical, non-monetary terms, such as ridership estimates, emissions levels, *etc.*) should be provided.

The lack of a useful analysis of expected project benefits and costs may be the basis for denying an award of a TIGER Discretionary Grant to an applicant. If it is clear to DOT that the total benefits of a project are not reasonably likely to outweigh the project's costs, DOT will not award a TIGER Discretionary Grant to the project. Consistent with the broader goals of DOT and the FY 2011 Continuing Appropriations Act, DOT can consider some factors that do not readily lend themselves to quantification or monetization, including equitable geographic distribution of grant funds and an appropriate balance in addressing the needs of urban and rural areas and investment in a variety of transportation modes.

Detailed guidance for the preparation of benefit-cost analyses is provided in *Appendix A.* Benefits should be presented, whenever possible, in a tabular form showing benefits and costs in each year for the useful life of the project. Benefits and costs should both be discounted to the year 2011, and present discounted values of both the stream of benefits and the stream of costs should be calculated. If the project has multiple parts, each of which has independent utility, the benefits and costs of each part should be estimated and presented separately. A project component has independent utility if the component itself could qualify as an

[4] In full, this principle reads: ''Provide more transportation choices. Develop safe, reliable and economical transportation choices to decrease household transportation costs, reduce our nations' dependence on foreign oil, improve air quality, reduce greenhouse gas emissions and promote public health.''

Eligible Project and would provide benefits that satisfy the selection criteria specified in this notice, as described further in Section III(B) *(Evaluation of Eligibility)* below. The results of the benefit-cost analysis should be summarized in the Project Narrative section of the application itself, but the details may be presented in an attachment to the application.

DOT recognizes that some categories of costs and benefits are more difficult to quantify or monetize than others. In presenting benefit-cost analyses, applicants should include qualitative discussion of the categories of benefits and costs that they were not able to quantify, noting that these benefits and costs are in addition to other benefits and costs that were quantified. However, in the event of an unreasonable absence of data and analysis, or poor applicant effort to put forth a robust quantification of benefits and costs, the application is unlikely to receive further consideration. In general, the lack of a useful analysis comparing benefits and costs for any such project is ground for denying the award of a TIGER Discretionary Grant.

Evaluation of Project Performance: Each applicant selected for TIGER Discretionary Grant funding will be required to work with DOT on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project.

(b) Job Creation & Near-Term Economic Activity

In order to measure a project's alignment with this criterion, DOT will assess whether the project promotes the short- or long-term creation or preservation of jobs and whether the project rapidly promotes new or expanded business opportunities during construction of the project or thereafter. Demonstration of a project's rapid economic impact is critical to a project's alignment with this criterion. Applicants are encouraged to provide information to assist DOT in making these assessments, including the total amount of funds that will be expended on construction and construction-related activities by all of the entities participating in the project and, to the extent measurable, the number and type of jobs to be created and/or preserved by the project by calendar quarters during construction and annually thereafter. Applicants should also identify any business enterprises to be created or benefited by the project during its construction and once it becomes operational.[5]

Consistent with the Recovery Act, the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 issued by the Office of Management and Budget (''OMB'') on April 3, 2009 (the ''OMB Guidance''), which were applied both to TIGER I and TIGER II, and which DOT will continue to apply to the TIGER Discretionary Grants program as a matter of policy, and consistent with applicable Federal laws, applicants are encouraged to provide information to assist DOT in assessing (1) whether the project will promote the creation of job opportunities for low-income workers through the use of best practice hiring programs and apprenticeship (including pre-apprenticeship) programs; (2) whether the project will provide maximum practicable opportunities for small businesses and disadvantaged business enterprises, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) whether the project will make effective use of community-based organizations in connecting disadvantaged workers with economic opportunities; (4) whether the project will support entities that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) whether the project implements best practices, consistent with our Nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, disability, and national origin—benefit from TIGER grant funding.

To the extent possible, applicants should indicate whether the populations most likely to benefit from the creation or preservation of jobs or new or expanded business opportunities are from Economically Distressed Areas. In addition, to the extent possible, applicants should indicate whether the project's procurement plan is likely to create follow-on jobs and near-term economic activity for manufacturers and suppliers that support the construction industry. A key consideration in assessing projects under this criterion will be how quickly jobs are created.

In evaluating a project's alignment with this criterion, DOT will assess whether a project is ready to proceed rapidly upon receipt of a TIGER Discretionary Grant (see *Appendix C: Additional Information on Project Readiness Guidelines* for further details), as evidenced by:

(i) *Project Schedule:* A feasible and sufficiently detailed project schedule demonstrating that the project can begin construction quickly upon receipt of a TIGER Discretionary Grant,[6] and that the grant funds will be spent steadily and expeditiously once construction starts; the schedule should show how many direct, on-project jobs are expected to be created or sustained during each calendar quarter after the project is underway;

(ii) *Environmental Approvals:* Receipt (or reasonably anticipated receipt) of all environmental approvals necessary for the project to proceed to construction on the timeline specified in the project schedule, including satisfaction of all Federal, State and local requirements and completion of the National Environmental Policy Act (''NEPA'') process;

To demonstrate satisfaction of this requirement, applicants should provide assurances with their pre-applications and evidence with their applications that NEPA review is complete or substantially complete and submit relevant draft or final NEPA documentation—preferably by way of a Web site link—for DOT review. DOT is unlikely to select a project for TIGER Discretionary Grant funding if it involves, or potentially involves,

[5] The Executive Office of the President, Council of Economic Advisers, issued a memorandum in May 2009 on ''Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009.'' The memorandum is available at: *http://www.whitehouse.gov/administration/eop/cea/Estimate-of-Job-Creation/*. Table 5 of this memorandum provides a simple rule for estimating job-years created by government spending, which is that $92,000 of government spending creates one job-year. Of this, 64% of the job-year estimate represents direct and indirect effects and 36% of the job-year estimate represents induced effects. Applicants can use this estimate as an appropriate indicator of direct, indirect and induced job-years created by TIGER Discretionary Grant spending, but are encouraged to supplement or modify this estimate to the extent they can demonstrate that such modifications are justified. However, since the May 2009 memorandum makes job creation purely a function of the level of expenditure, applicants should also demonstrate how quickly jobs will be created under the proposed project. Projects that generate a given number of jobs more quickly will have a more favorable impact on economic recovery. A quarter-by-quarter projection of the number of direct job-hours expected to be created by the project is useful in assessing the impacts of a project on economic recovery. Furthermore, applicants should be aware that certain types of expenditures are less likely to align well with the Job Creation & Near-Term Economic Activity criterion. These types of expenditures include, among other things, engineering or design work and purchasing existing facilities or right-of-way.

[6] Applicants should demonstrate that their project can obligate grant funds no later than June 30, 2013 in order give DOT comfort that the TIGER Discretionary Grant funds are likely to be obligated in advance of the September 30, 2013 statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they are used.

significant environmental impacts and has not begun or has not substantially completed required environmental and regulatory reviews. For such projects that have not begun, or have not substantially completed these reviews, it may be difficult to complete environmental and regulatory review as well as all activities needed to be complete prior to construction and meet the obligation deadline of September 30, 2013.

DOT will consider exceptions to the requirement that NEPA be substantially complete upon application in accordance with this paragraph. If an applicant has not substantially completed the NEPA process the applicant should provide information on the project's current status in the NEPA process and an estimate of the latest date that the NEPA process is reasonably expected to be completed. If an applicant has not initiated the NEPA process the applicant must provide a reasonable justification for why the NEPA process has not yet been initiated as of the date of this notice, and an assurance that the necessary environmental reviews can be completed with enough time for any post-NEPA, pre-obligation activities to be completed by June 30, 2013, in order to give DOT comfort that all of the TIGER Discretionary Grant funds are likely to be obligated in advance of the September 30, 2013 statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be obligated (see *Appendix C* for additional guidance). An example of a reasonable justification for why an applicant has not initiated NEPA review would be if, prior to the availability of TIGER Discretionary Grant funds, there were no reasonable expectations of receiving Federal funding for the project. A project selected for award that has not completed the NEPA process may not be permitted to use grant funds for construction and related activities until NEPA is complete and all other necessary environmental approvals have been received.

An applicant seeking to justify an exception to this requirement should submit the information listed below with its application:

a. The information required under Sections VII(C)(2)(V) and VII(F)–(G) *(Contents of Applications)* of this notice;

b. Environmental studies or other documents—preferably by way of a Web site link—that describe in detail known potential project impacts, and possible mitigation for those impacts;

c. A description of completed, or planned and anticipated coordination with Federal and State regulatory agencies for permits and approvals;

d. An estimate of the time required for completion of NEPA and all other required Federal, State or local environmental approvals; and

e. An identification of the proposed NEPA class of action (*i.e.,* Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement).

(iii) *Legislative Approvals:* Receipt of all necessary legislative approvals (for example, legislative authority to charge user fees or set toll rates), and evidence of support from State and local elected officials; evidence of support from all relevant State and local officials is not required, however, the evidence should demonstrate that the project is broadly supported;

(iv) *State and Local Planning:* The planning requirements of the operating administration administering the TIGER project will apply.[7] Where required by an operating administration, a project should demonstrate that a project is included in the relevant State, metropolitan, and local planning documents, or will be included. To demonstrate satisfaction of this requirement, applicants should provide evidence that the project is included in the relevant planning documents. One way applicants may do this is by providing a link to a Web site showing the planning documents. If the project is not included in the relevant planning documents at the time the application is submitted, applicants should submit a certification from the appropriate planning agency that actions are underway at the time of the application to include the project in the relevant planning document. The applicant should provide a schedule demonstrating when the project will be added to the relevant planning documents; any applicant that is applying for a TIGER Discretionary Grant and does not own all of the property or right-of-way required to complete the project should provide evidence that the property and/or right-of-way owner whose permission is required to complete the project supports the application and will cooperate in carrying out the activities to be supported by the TIGER Discretionary Grant;

(v) *Technical Feasibility:* The technical feasibility of the project, as indicated by previously performed and/or ongoing engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the TIGER application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. For projects generating ongoing operating expenses, an estimate of those expenses and a basis for the estimate. Technical feasibility also includes the technical capacity of the project sponsor, including a staffing and management plan, demonstrated experience in successfully implementing (on-time and on-budget) similar capital investments, and other indications of sponsor and partner technical capacity to construct the project.; and

(vi) *Financial Feasibility:* The viability and completeness of the project's financing package (assuming the availability of the requested TIGER Discretionary Grant funds), including evidence of stable and reliable capital and (as appropriate) operating revenue commitments sufficient to cover estimated costs; the availability of contingency reserves should planned capital or operating revenue sources not materialize; evidence of the financial condition of the project sponsor; and evidence of the grant recipient's ability to manage grants.

DOT reserves the right to revoke any award of TIGER Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. Because projects have different schedules DOT will consider on a case-by-case basis how much time after selection for award of a TIGER Discretionary Grant each project has before funds must be obligated (consistent with law) and construction started. This deadline will be specified

[7] All regionally significant projects requiring an action by the FHWA or the FTA must be in the metropolitan transportation plan, TIP and STIP. Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. To the extent a project is required to be on a metropolitan transportation plan, TIP and/or STIP it will not receive a TIGER Discretionary Grant until it is included in such plans. Projects not currently included in these plans can be amended in by the State and MPO. Projects that are not required to be in long range transportation plans, STIPs and TIPs will not need to be included in such plans in order to receive a TIGER Discretionary Grant. Freight and passenger rail projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. This is consistent with the exemption for high speed and intercity passenger rail projects under the Recovery Act. However, applicants seeking funding for freight and passenger rail projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals.

for each TIGER Discretionary Grant in the project-specific grant agreements signed by the grant recipients and will be based on critical path items identified by applicants in response to items (i) through (vi) above, but all deadlines will reflect DOT's preference that pre-conditions be complete and TIGER Discretionary Grants funds obligated on or before June 30, 2013 in order to give DOT comfort that all TIGER Discretionary Grant funds will be obligated before the statutory deadline of September 30, 2013. For example, if an applicant reasonably anticipates that NEPA requirements will be completed and a final decision made within 30 to 60 days of announcement of the award of a TIGER Discretionary Grant, this timeframe will be taken into account in evaluating the application, but also in establishing a deadline for obligation of funds and commencement of construction. By statute, DOT's ability to obligate funds for TIGER Discretionary Grants expires on September 30, 2013 and DOT has no authority to extend the deadline.

2. Secondary Selection Criteria

(a) Innovation

In order to measure a project's alignment with this criterion, DOT will assess the extent to which the project uses innovative technology (including, for example, intelligent transportation systems, dynamic pricing, rail wayside or on-board energy recovery, smart cards, real-time dispatching, active traffic management, radio frequency identification (RFID), or others) to pursue one or more of the long-term outcomes outlined above and/or to significantly enhance the operational performance of the transportation system. DOT will also assess the extent to which the project incorporates innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance. The applicant should clearly demonstrate that the innovation is designed to pursue one or more of the long-term outcomes outlined above and/or significantly enhance the transportation system.

Innovative, multi-modal projects are often difficult to fund under traditional transportation programs. DOT will consider the extent to which innovative projects might be difficult to fund under other programs and will give priority to projects that align well with the Primary Selection Criteria but are unlikely to receive funding under traditional programs.

(b) Partnership

(i) *Jurisdictional & Stakeholder Collaboration:* In order to measure a project's alignment with this criterion, DOT will assess the project's involvement of non-Federal entities and the use of non-Federal funds, including the scope of involvement and share of total funding. DOT will give priority to projects that receive financial commitments from, or otherwise involve, State and local governments, other public entities, or private or nonprofit entities, including projects that engage parties that are not traditionally involved in transportation projects, such as nonprofit community groups. Pursuant to the OMB Guidance, DOT will give priority to projects that make effective use of community-based organizations in connecting disadvantaged people with economic opportunities. Letters of commitment and other supporting documentation showing existing or confirmed collaboration, partnerships, *etc.,* should be provided (preferably through a Web site link) to demonstrate alignment with this criterion.

In compliance with the FY 2011 Continuing Appropriations Act, DOT will give priority to projects for which a TIGER Discretionary Grant will help to complete an overall financing package. An applicant should clearly demonstrate in the application the extent to which the project cannot be readily and efficiently completed without Federal assistance, and the extent to which other sources of Federal assistance are or are not readily available for the project. DOT will assess the amount of private debt and equity to be invested in the project or the amount of co-investment from State, local or other non-profit sources.

DOT will also assess the extent to which the project application demonstrates collaboration among neighboring or regional jurisdictions to achieve National, regional or metropolitan benefits. Multiple States or jurisdictions may submit a joint application and should identify a lead State or jurisdiction as the primary point of contact. Where multiple States or jurisdictions are submitting a joint application, the application should demonstrate how the project costs are apportioned between the States or jurisdictions to assist DOT in making the distributional determinations described below in Section III(C) (*Distribution of Funds*).

(ii) *Disciplinary Integration:* In order to demonstrate the value of partnerships across government agencies that serve various public service missions and to promote collaboration on the objectives outlined in this notice, DOT will give priority to projects that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives. For example, DOT will give priority to transportation projects that create more livable communities and are supported by relevant public housing agencies or are consistent with State or local efforts or plans to promote economic development, revitalize communities, or protect historic or cultural assets; similarly, DOT will give priority to transportation projects that encourage energy efficiency or improve the environment and are supported by relevant public agencies with energy or environmental missions.

III. Evaluation and Selection Process

A. Evaluation Process

TIGER Discretionary Grant applications will be evaluated in accordance with the below discussed evaluation process. DOT will establish a pre-application evaluation team to review each pre-application that is received by DOT on or prior to the Pre-Application Deadline. This evaluation team will be organized and led by the Office of the Secretary and will include members from the relevant modal administrations in DOT with the most experience and/or expertise in the relevant project areas (the ''Cognizant Modal Administrations''). These representatives will include technical and professional staff with relevant experience and/or expertise. This evaluation team will be responsible for analyzing whether the pre-application satisfies the following key threshold requirements:

1. The project is an Eligible Project;

2. NEPA is complete or underway, as described above in Section II(B)(2)(b)(ii) *(Environmental Approvals);*

3. The project is included in the relevant State, metropolitan, and local planning documents, or will be included, if applicable;

4. The project expects to be ready to obligate all of the TIGER Discretionary Grant funds no later than June 30, 2013 [8]; and

5. Local matching funds to support 20 percent or more of the costs for the project are identified and committed.[9]

[8] See footnote 7, above.

[9] For FHWA and FTA committed funds are defined as: ''Funds that have been dedicated or obligated for transportation purposes'' as described in 23 CFR 450.104.

DOT will consider any non-Federal funds as a local match for purposes of this program, whether such funds are contributed by the public sector (State or local) or the private sector. However, DOT cannot consider funds already expended as a local match. Furthermore, the 20 percent matching requirement for projects that are not in rural areas is an eligibility requirement. All projects, whether in an urban or rural area, can increase their competitiveness by demonstrating significant non-Federal contributions in excess of the required local match, and DOT will give priority, based on the FY 2011 Continuing Appropriations Act, to projects for which Federal funding is required to complete an overall financing package.

To the extent the pre-application evaluation team determines that a pre-application does not satisfy these key threshold requirements, DOT will inform the project sponsor that an application for the project will not be reviewed unless the application submitted on or prior to the Application Deadline can demonstrate that the requirement has been addressed.

DOT will establish application evaluation teams to review each application that is received by DOT prior to the Application Deadline. These evaluation teams will be organized and led by the Office of the Secretary and will include members from each of the Cognizant Modal Administrations. These representatives will include technical and professional staff with relevant experience and/or expertise. The evaluation teams will be responsible for evaluating and rating all of the projects and making funding recommendations to the Secretary. The evaluation process will require team members to evaluate and rate applications individually before convening with other members to discuss ratings. The composition of the evaluation teams will be finalized after the Pre-Application Deadline, based on the number and nature of pre-applications received.

DOT will not assign specific numerical scores to projects based on the selection criteria outlined above in Section II(A) (*Selection Criteria*). Rather, ratings of ''highly recommended,'' ''recommended,'' ''not recommended'', or ''negative'' will be assigned to projects for each of the selection criteria. DOT will award TIGER Discretionary Grants to projects that are well-aligned with one or more of the selection criteria, with projects that are well-aligned with multiple selection criteria being more likely to receive TIGER Discretionary Grants. In addition, DOT will consider whether a project has a negative effect on any of the selection criteria, and any such negative effect may reduce the likelihood that the project will receive a TIGER Discretionary Grant. To the extent the initial evaluation process does not sufficiently differentiate among highly rated projects, DOT will use a similar rating process to re-assess the projects that were highly rated and identify those that should be most highly rated.

DOT will give more weight to the two Primary Selection Criteria (*Long-Term Outcomes* and *Job Creation & Near-Term Economic Activity*), which will be weighted equally, than to the two Secondary Selection Criteria (*Innovation* and *Partnership*) which will also be weighted equally. Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in Section II(A)(1)(a) (*Long-Term Outcomes*) will not proceed in the evaluation process. A project need not be well aligned with each of the long-term outcomes in order to be successful in the long-term outcomes criterion overall. However, projects that are strongly aligned with multiple long-term outcomes will be the most successful in this criterion. Furthermore, a project that has a negative effect on safety or environmental sustainability will need to demonstrate significant merits in other long-term outcomes in order to be selected for funding.

For the Job Creation & Near-Term Economic Activity criterion, projects need not receive a rating of ''highly recommended'' in order to be recommended for funding, although a project that is not ready to proceed quickly, as evidenced by the items requested in Section II(B)(1)(b)(i)–(vi) (*Project Schedule, Environmental Approvals, Legislative Approvals, State and Local Planning, Technical Feasibility,* and *Financial Feasibility*), is less likely to be successful under this criterion.

The following table summarizes the weighting of the selection criteria, as described in the preceding paragraphs:

Primary Selection Criteria	
Long-Term Outcomes:	DOT will give more weight to this criterion than to either of the Secondary Selection Criteria. In addition, this criterion has a minimum threshold requirement. Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in this criterion will not proceed in the evaluation process.
Job Creation & Near-Term Economic Activity	DOT will give more weight to this criterion than to either of the Secondary Selection Criteria. This criterion will be considered after it is determined that a project demonstrates a likelihood of significant long-term benefits in at least one of the five long-term outcomes identified in the long-term outcomes criterion.
Secondary Selection Criteria	
.	
Innovation & Partnership	DOT will give less weight to these criteria than to the Primary Selection Criteria. These criteria will be weighted equally.

As noted below in Section III(C) *(Distribution of Funds),* upon completion of this competitive rating process DOT will analyze the preliminary list and determine whether the purely competitive ratings are consistent with the distributional requirements of the FY 2011 Continuing Appropriations Act. If necessary, DOT will adjust the list of recommended projects to satisfy the statutory distributional requirements while remaining as consistent as possible with the competitive ratings.

B. Evaluation of Eligibility

To be selected for a TIGER Discretionary Grant, a project must be an Eligible Project and the applicant must be an Eligible Applicant. DOT may consider one or more components of a large project to be an Eligible Project, but only to the extent that the

components have independent utility, meaning the components themselves, not the project of which they are a part, are Eligible Projects and satisfy the selection criteria identified above in Section II(A) (*Selection Criteria*). For these projects, the benefits described in an application must be related to the components of the project for which funding is requested, not the full project of which they are a part. DOT will not fund individual phases of a project if the benefits of completing only these phases would not align well with the selection criteria specified in the Notice because the overall project would still be incomplete.

To the extent that an application requests a substantial amount of grant funds for a larger project or a group of related projects, DOT reserves the right to award funds for a part of the project, not the full project, if a part of the project has independent utility and aligns well with the selection criteria specified in this notice. To the extent applicants expect that DOT may wish to consider funding one or more parts of a project and not the full project that is the subject of the application, then applicants should clearly identify in their applications the separate parts of the project and the benefits that each part of the project provides, and how these benefits align with the selection criteria. Similarly, if a project is not viable unless DOT funds the full project, this should be stated in the application.

C. Distribution of Funds

As noted above in Section I (*Background*), the FY 2011 Continuing Appropriations Act prohibits the award of more than 25 percent of the funds made available under the TIGER program to projects in any one State. The FY 2011 Continuing Appropriations Act also requires that DOT take measures to ensure an equitable geographic distribution of funds, an appropriate balance in addressing the needs of urban and rural areas, and the investment in a variety of transportation modes. DOT will apply an initial unconstrained competitive rating process based on the selection criteria identified above in Section II(A) (*Selection Criteria*) to determine a preliminary list of projects recommended for TIGER Discretionary Grants. DOT will then analyze the preliminary list and determine whether the purely competitive ratings are consistent with the distributional requirements of the FY 2011 Continuing Appropriations Act. If necessary, DOT will adjust the list of recommended projects to satisfy the statutory distributional requirements while remaining as consistent as possible with the competitive ratings.

As noted above in Section II(B)(2)(b)(i) (*Jurisdictional & Stakeholder Collaboration*), applications submitted jointly by multiple Eligible Applicants must include an allocation of project costs to assist DOT in making these determinations. In addition, DOT will use the TIFIA subsidy and administrative cost estimate, not the principal amount of credit assistance, to determine any TIGER TIFIA Payment's effect on these distributional requirements.

D. Transparency of Process

In the interest of transparency, DOT will disclose as much of the information related to its evaluation process as is practical and consistent with law. DOT expects that the TIGER Discretionary Grant program may be reviewed and/or audited by Congress, the U.S. Government Accountability Office, DOT's Inspector General, or others, and has taken, and will continue to take steps to document its decision-making process.

IV. Grant Administration

DOT expects that each TIGER Discretionary Grant will be administered by one of the Cognizant Modal Administration, pursuant to a grant agreement between the TIGER Discretionary Grant recipient and the Cognizant Modal Administration. In accordance with the FY 2011 Continuing Appropriations Act, the Secretary has the discretion to delegate such responsibilities to the appropriate operating administration.

Applicable Federal laws, rules and regulations of the Cognizant Modal Administration administering the project will apply to projects that receive TIGER Discretionary Grants.

As noted above in Section II(B)(1)(b) (*Job Creation & Near-Term Economic Activity*), how soon after selection for award a project is expected to obligate grant funds and start construction will be considered on a case-by-case basis and will be specified in the project-specific grant agreements. DOT reserves the right to revoke any award of TIGER Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. DOT's ability to obligate funds for TIGER Discretionary Grants expires on September 30, 2013.

V. Projects in Rural Areas

The FY 2011 Continuing Appropriations Act directs that not less than $140 million of the funds provided for TIGER Discretionary Grants are to be used for projects in rural areas. For purposes of this notice, DOT is generally defining ''rural area'' as any area not in an Urbanized Area, as such term is defined by the Census Bureau,[10] and will consider a project to be in a rural area if all or the majority of a project is located in a rural area. To the extent more than a *de minimis* portion of a project is located in an Urbanized Area, applicants should identify the estimated percentage of project costs that will be spent in Urbanized Areas and the estimated percentage that will be spent in rural areas.

For projects located in rural areas the FY 2011 Appropriation Act does not require matching funds (although the statute does direct DOT to give priority to projects, including projects located in rural areas, for which Federal funding is required to complete an overall financing package that includes non-Federal sources of funds) and the minimum grant size is $1 million. Applicants for TIGER Discretionary Grants of between $1 million and $10 million for projects located in rural areas are encouraged to apply and should address the same criteria as applicants for TIGER Discretionary Grants in excess of $10 million.

VI. TIGER TIFIA Payments

Up to $150 million of the $526.944 million available for TIGER Discretionary Grants may be used for TIGER TIFIA Payments. Based on the average subsidy cost of the existing TIFIA portfolio, $150 million in TIGER TIFIA Payments could support approximately $1.5 billion in Federal credit assistance.

Applicants seeking TIGER TIFIA Payments should apply in accordance with all of the criteria and guidance specified in this notice for TIGER Discretionary Grant applications and will be evaluated concurrently with all other applicants. Any applicant seeking a TIGER TIFIA Payment is also required to submit a TIFIA letter of interest concurrent with the TIGER TIFIA Payment application. If selected for a TIGER TIFIA Payment, the applicant must comply with all of the TIFIA program's standard application and approval requirements including submission of a complete TIFIA application and $50,000 application fee

[10] For Census 2000, the Census Bureau defined an Urbanized Area (UA) as an area that consists of densely settled territory that contains 50,000 or more people. Updated lists of UAs are available on the Census Bureau Web site. Urban Clusters (UCs) will be considered rural areas for purposes of the TIGER Discretionary Grant program.

(the TIFIA program guide can be downloaded from *http://tifia.fhwa.dot.gov/*).

Applicants should demonstrate that the TIFIA loan will be ready to close on or before September 30, 2013, in accordance with the guidance specified above in Section II(B)(1)(b) (*Job Creation & Near-Term Economic Activity*). DOT's TIFIA Joint Program Office will assist DOT in determining a project's readiness to proceed rapidly upon receipt of a TIGER TIFIA Payment.

Applicants seeking TIGER TIFIA Payments may also apply for a TIGER Discretionary Grant for the same project and must indicate the type(s) of funding for which they are applying clearly on the face of their applications. An applicant for a TIGER TIFIA Payment must submit an application pursuant to this notice for a TIGER TIFIA Payment even if it does not wish to apply for a TIGER Discretionary Grant.

DOT reserves the right to offer a TIGER TIFIA Payment to an applicant that applied for a TIGER Discretionary Grant even if DOT does not choose to fund the requested TIGER Discretionary Grant request and the applicant did not request a TIGER TIFIA Payment. Therefore, applicants for TIGER Discretionary Grants, particularly applicants that require a substantial amount of funds to complete a financing package, should indicate whether or not they have considered applying for a TIGER TIFIA Payment. To the extent an applicant thinks that TIFIA may be a viable option for the project, applicants should provide a brief description of a project finance plan that includes TIFIA credit assistance and identifies a source of revenue which may be available to support the TIFIA credit assistance.

Unless otherwise expressly noted herein, any and all requirements that apply to TIGER Discretionary Grants pursuant to the FY 2011 Continuing Appropriations Act, this notice, or otherwise, apply to TIGER TIFIA Payments.

Pre-Application and Application Cycle

VII. Pre-Application and Application Cycle

A. Two Stages of Application Cycle

The application cycle for TIGER Discretionary Grants has two stages:

1. *Pre-Application:* In Stage 1, applicants must submit a pre-application form to the DOT. This step qualifies applicants to submit an application in Stage 2. No application submitted during Stage 2 that does not correlate with a properly completed Stage 1 pre-application will be considered.

2. *Application:* In Stage 2, applicants must submit a complete application package through Grants.gov. If an applicant is seeking a TIGER TIFIA payment, applicants must submit electronically a TIFIA letter of interest to the TIFIA office at *TIFIACredit@dot.gov.* TIFIA letters of interest must comply with all of the program's standard requirements (the TIFIA program guide can be downloaded from *http://tifia.fhwa.dot.gov/*).

Pre-applications must be submitted to DOT by the Pre-Application Deadline, which is October 3, 2011, at 5 p.m. EST. Final applications must be submitted through Grants.gov by the Application Deadline, which is October 31, 2011, at 5 p.m. EST. The Grants.gov ''Apply'' function will open on October 5, 2011, allowing applicants to submit applications. While applicants are encouraged to submit pre-applications in advance of the Pre-Application Deadline, pre-applications will not be reviewed until after the Pre-Application Deadline. Similarly, while applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and selections for awards will not be made, until after the Application Deadline.

Pre-applications (stage 1) must be submitted to the DOT. The pre-application form will be available on the DOT Web site at *http://www.dot.gov/TIGER* on or before September 9, 2011, together with instructions for submitting the pre-application form electronically to DOT.

Applications (Stage 2) must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit applications can be found at www.grants.gov. Please be aware that the registration process usually takes 2–4 weeks and must be completed before an application can be submitted. If interested parties experience difficulties at any point during the registration or application process, please call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST. Additional information on applying through Grants.gov is available in *Appendix B,* attached hereto.

To help ensure that applicants submit only those applications that are most likely to align well with the department's selection criteria, each applicant may submit no more than three applications for consideration under the TIGER Discretionary Grant Program. While applications may include requests to fund more than one project, applicants should not bundle together unrelated projects in the same application for purposes of avoiding the three application limit that applies to each applicant. Please note that the three application limit applies only to applications where the applicant is the lead applicant, and there is no limit on applications for which an applicant can be listed as a partnering agency. Also, DOT will not count any application for a multistate project against the three application limit to the extent multiple states are partnering to submit the application.

B. Contents of Pre-Applications

An applicant for a TIGER Discretionary Grant should provide all of the information requested below in its pre-application form. DOT reserves the right to ask any applicant to supplement the data in its pre-application, but expects pre-applications to be complete upon submission. Applicants must complete the pre-application form and send it to DOT electronically on or prior to the Pre-Application Deadline, in accordance with the instructions specified at *http://www.dot.gov/TIGER.* The pre-application form must include the following information:

i. Name of applicant (if the application is to be submitted by more than one entity, a lead applicant must be identified);

ii. Applicant's DUNS (Data Universal Numbering System) number;

iii. Type of applicant (State government, local government, U.S. territory, Tribal government, transit agency, port authority, metropolitan planning organization, or other unit of government);

iv. State(s) where the project is located;

v. County(s) where the project is located;

vi. City(s) where the project is located;

vii. Information about the geographic location of the project for mapping purposes using one of the following methods:

1. A geographic information system (GIS) file that indicates the location of the project;

2. For locating point specific projects, latitude and longitude in decimal degrees to an accuracy of 5 decimal places (*e.g.* 0.12345) using the WGS 84 datum (the default datum used by Global Positioning System (GPS) equipment; or

3. For linear projects on existing roads, route number (Interstate, U.S. Route, or State Route) or road name and the latitude and longitude in decimal

degrees to an accuracy of 5 decimal places (*e.g.* 0.12345) of the beginning and ending points of the project;

viii. Project title (descriptive);

ix. Project type: Highway, transit, rail, port, multimodal, or bicycle and pedestrian activity (if the project is a multimodal project, the pre-application form will require that applicants provide additional information identifying the affected modes);

x. Whether the project is requesting a TIGER TIFIA Payment;

xi. Project description (describe the project in plain English terms that would be generally understood by the public, using no more than 50 words (*e.g.* ''the project will replace the existing bridge over the W river on interstate-X between the cities of Y and Z''; please do not describe the project's benefits, background, or alignment with the selection criteria in this description);

xii. Total cost of the project;

xiii. Total amount of TIGER Discretionary Grant funds requested;

xiv. Contact name, phone number, e-mail address, and physical address for applicant;

xv. Congressional districts affected by the project;

xvi. Type of jurisdiction where the project is located (urban or rural, as defined above in Section V *(Projects in Rural Areas)*);

xvii. Whether or not the project is in an Economically Distressed Area, as defined in Section II(A) *(Selection Criteria);*

xviii. An assurance that the NEPA and/or environmental review process is complete, substantially complete, or in progress (and the expected outcome of the process), unless an exception is justified pursuant to Section II(B)(1)(b)(ii) *(Environmental Approvals).* Absent an acceptable justification, DOT will not evaluate applications for projects that have not made substantial progress in the environmental review process, including all Federal, State, and local environmental requirements, by the Pre-Application Deadline;

xix. The schedule for completing right-of-way acquisition and final design; approval of plans, specifications, and estimates;

xx. The date that the project is expected to be ready for obligation of grant funds, which should be no later than June 30, 2013 in order to give DOT comfort that the funds will be obligated before they expire on September 30, 2013; and

xxi. An assurance that local matching funds to support 20 percent or more of the costs of the project are identified and committed (as noted in Section I *(Background),* this requirement does not apply to projects located in rural areas (as defined above in Section V *(Projects in Rural Areas)*), and these projects do not need to provide this assurance); however, DOT will give priority to projects that also will be funded with non-Federal sources of funds.

To the extent the pre-application does not provide adequate assurances for items xvii through xxii, DOT will inform the project sponsor that an application for the project will not be reviewed unless the application submitted on or prior to the Application Deadline can demonstrate that each requirement has been addressed.

C. Contents of Applications

An applicant for a TIGER Discretionary Grant must include all of the information requested below in its application. DOT reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. To the extent practical, DOT encourages applicants to provide data and evidence of project merits in a form that is publicly available or verifiable. For TIGER TIFIA Payments, these requirements apply only to the applications required under this notice; the standard TIFIA letter of interest and loan application requirements, including the standard $50,000.00 application fee, are separately described in the Program Guide and Application Form found at *http://tifia.fhwa.dot.gov/.*

1. Standard Form 424, Application for Federal Assistance

Please see *http://www07.grants.gov/assets/SF424Instructions.pdf* for instructions on how to complete the SF 424, which is part of the standard Grants.gov submission. Additional clarifying guidance and FAQs to assist applicants in completing the SF–424 will be available at *http://www.dot.gov/TIGER* by September 16, 2011, when the ''Apply'' function within Grants.gov opens to accept applications under this notice.

2. Project Narrative (Attachment to SF 424)

The project narrative must respond to the application requirements outlined below. DOT recommends that the project narrative be prepared with standard formatting preferences (*e.g.* a single-spaced document, using a standard 12-point font, such as Times New Roman, with 1-inch margins).

A TIGER Discretionary Grant application must include information required for DOT to assess each of the criteria specified in Section II(A) (*Selection Criteria*), as such criteria are explained in Section II(B) (*Additional Guidance on Selection Criteria*). Applicants must demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Applicants should provide concrete evidence of project milestones, financial capacity and commitment in order to support project readiness. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits identified below in Part D (*Length of Applications*). Information provided pursuant to this paragraph must be quantified, to the extent possible, to describe the project's benefits to the Nation, a metropolitan area, or a region. Information provided pursuant to this paragraph should include projections for both the build and no-build scenarios for the project for a point in time at least 20 years beyond the project's completion date or the lifespan of the project, whichever is closest to the present.

All applications should include a detailed description of the proposed project and geospatial data for the project, including a map of the project's location and its connections to existing transportation infrastructure. An application should also include a description of how the project addresses the needs of an urban and/or rural area. An application should clearly describe the transportation challenges that the project aims to address, and how the project will address these challenges. The description should include relevant data such as, for example, passenger or freight volumes, congestion levels, infrastructure condition, or safety experience.

DOT recommends that the project narrative generally adhere to the following basic outline, and include a table of contents, maps and graphics that make the information easier to review:

I. Project Description (including a description of the transportation challenges that the project aims to address, and how the project will address these challenges);

II. Project Parties (information about the grant recipient and other project parties);

III. Grant Funds and Sources/Uses of Project Funds (information about the amount of grant funding requested, availability/commitment of funds sources and uses of all project funds, total project costs, percentage of project costs that would be paid for with

TIGER Discretionary Grant funds, and the identity and percentage shares of all parties providing funds for the project (including Federal funds provided under other programs));

IV. Selection Criteria (information about how the project aligns with each of the primary and secondary selection criteria and a description of the results of the benefit-cost analysis):

a. Long-Term Outcomes

i. State of Good Repair

ii. Economic Competitiveness

iii. Livability

iv. Sustainability

v. Safety

b. Job Creation & Near-Term Economic Activity

c. Innovation

d. Partnership

e. Results of Benefit-Cost Analysis

V. Project Readiness and NEPA (information about how ready the project is to move forward quickly, including information about the project schedule, environmental approvals, legislative approvals, state and local planning, technical feasibility, and financial feasibility);

VI. Federal Wage Rate Certification (an application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the FY 2011 Continuing Appropriations Act); and

VII. To the extent relevant, the final page of the application should describe (in one page or less) any material changes that need to be made to the pre-application form, including changes to the assurances provided in items xvii through xxii regarding initiation of NEPA, planning, and required cost sharing.

The purpose of this recommended format is to ensure that applications are provided in a format that clearly addresses the application requirements and makes critical information readily apparent and easy to locate.

D. Length of Applications

The project narrative may not exceed 25 pages in length. Documentation supporting the assertions made in the narrative portion may also be provided, but should be limited to relevant information. If possible, Web site links to supporting documentation (including a more detailed discussion of the benefit-cost analysis) should be provided rather than copies of these materials. At the applicant's discretion, relevant materials provided previously to a Cognizant Modal Administration in support of a different DOT discretionary program (for example, New Starts or TIFIA) may be referenced and described as unchanged. To the extent referenced, this information need not be resubmitted for the TIGER Discretionary Grant application (although provision of a Web site link would facilitate DOT's consideration of the information). DOT recommends use of appropriately descriptive file names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' *etc.*) for all attachments. Cover pages and tables of contents do not count towards the 25-page limit for the narrative portion of the application, and the Federal wage rate certification and one-page update of the pre-application form (if necessary) may also be outside of the 25-page narrative. Otherwise, the only substantive portions of the application that should exceed the 25-page limit are any supporting documents (including a more detailed discussion of the benefit-cost analysis) provided to support assertions or conclusions made in the 25-page narrative section.

E. Contact Information

Contact information is requested as part of the SF–424. DOT will use this information to inform parties of DOT's decision regarding selection of projects, as well as to contact parties in the event that DOT needs additional information about an application.

F. National Environmental Policy Act Requirement

An application for a TIGER Discretionary Grant must detail whether the project will significantly impact the natural, social and/or economic environment. If the NEPA process is completed, an applicant must indicate the date of, and provide a Web site link or other reference to, the final Categorical Exclusion, Finding of No Significant Impact or Record of Decision. If the NEPA process is underway but not complete, the application must detail where the project is in the process, indicate the anticipated date of completion and provide a Web site link or other reference to copies of any NEPA documents prepared.

G. Environmentally Related Federal, State and Local Actions

An application for a TIGER Discretionary Grant must indicate whether the proposed project requires actions by other agencies (*e.g.,* permits), indicate the status of such actions and provide a Web site link or other reference to materials submitted to the other agencies, and/or demonstrate compliance with other Federal, State and local regulations as applicable, including, but not limited to, Section 4(f) *Parklands, Recreation Areas, Refuges, & Historic Properties;* Section 106 *Historic and Culturally Significant Properties;* Clean Water Act *Wetlands and Water;* Executive Orders *Wetlands, Floodplains, Environmental Justice;* Clean Air Act *Air Quality (specifically note if the project is located in a nonattainment area);* Endangered Species Act *Threatened and Endangered Biological Resources;* Magnuson-Stevens Fishery Conservation and Management Act *Essential Fish Habitat;* The Bald and Golden Eagle Protection Act; and/or any State and local requirements.

H. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI);'' (2) mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

VIII. Project Benefits

DOT expects to identify and report on the benefits of the projects that it funds with TIGER Discretionary Grants. To this end, DOT will request that recipients of TIGER Discretionary Grants cooperate in Departmental efforts to collect and report on information related to the benefits produced by the projects that receive TIGER Discretionary Grants.

The benefits that DOT reports on may include the following: (1) Improved condition of existing transportation facilities and systems; (2) improved economic competitiveness in the form of reduced travel time, less traffic congestion, improved trip reliability, fewer vehicle miles traveled, or lower vehicle operating costs; (3) long-term growth in employment, production or other high-value economic activity; (4) improved livability of communities across the United States through expansion of transportation options, efficiency, and reliability; (5) improved

energy efficiency, reduced dependence on oil and reduced greenhouse gas emissions; (6) reduced adverse impacts of transportation on the natural environment; (7) reduced number, rate and consequences of surface transportation-related crashes, injuries and fatalities; (8) greater use of technology and innovative approaches to transportation funding and project delivery; (9) greater collaboration with state and local governments, other public entities, private entities, nonprofit entities, or other non-traditional partners; (10) greater integration of transportation decision making with decision making by other public agencies with similar public service objectives; or (11) any other benefits claimed in the project's benefit-cost analysis.

Because of the limited nature of this program, these benefits are likely to be reported on a project-by-project basis and trends across projects that were selected for TIGER Discretionary Grants may not be readily available. In addition, because many of these benefits are long-term outcomes, it may be years before the value of the investments can be quantified and fully reported. DOT is considering the most appropriate way to collect and report information about these potential project benefits.

IX. Questions and Clarifications

For further information concerning this notice please contact the TIGER Discretionary Grant program staff via e-mail at *TIGERGrants@dot.gov,* or call Howard Hill at 202–366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. DOT will regularly post answers to these questions and other important clarifications on DOT's Web site at *http://www.dot.gov/TIGER.*

Appendix A: Additional Information on Benefit-Cost Analysis

As previously discussed in the Notice, the lack of a useful analysis of expected project benefits and costs may be a basis for denying an award of a TIGER Discretionary Grant to any applicant. Additionally, if it is clear that the total benefits of a project are not reasonably likely to outweigh the project's costs, the Department will not award a TIGER Discretionary Grant to the project. Consequently, it is important for the applicant to prepare as thorough a benefit-cost analysis as possible that demonstrates clearly how both the costs and the benefits of the project were estimated. However, DOT understands that the level of expense that can be expected in these analyses for surveys, travel demand forecasts, market forecasts, statistical analyses, and so on will be less for smaller projects than for larger projects. The level of resources devoted to preparing the benefit-cost analysis should be reasonably related to the size of the overall project and the amount of grant funds requested in the application. Any subjective estimates of benefits and costs should still be quantified, and applicants are expected to provide whatever evidence they have available to lend credence to their subjective estimates. Estimates of benefits should be presented in monetary terms whenever possible; if a monetary estimate is not possible, then at least a quantitative estimate (in physical, non-monetary terms, such as ridership estimates, emissions levels, *etc.*) should be provided.

This appendix provides general information and guidance on conducting an analysis. In addition to this guidance, applicants should refer to OMB Circulars A–4 and A–94 in preparing their analysis (*http://www.whitehouse.gov/omb/circulars/*). Circular A–4 also cites textbooks on cost-benefit analysis (*e.g.,* Mishan and Quah[11]) if an applicant wants to review additional background material. The Department will rate all analyses as indicated below.

TABLE 1—RATINGS OF BENEFIT-COST ANALYSES

Rating	Description
Very useful	The economic analysis (i) is comprehensive (quantifying and monetizing the full range of costs and benefits, including the likely timing of such costs and benefits, for which such measures are reasonably available), (ii) attempts to describe the indirect effects of transportation investments on land use (when applicable), (iii) helps the Department organize information about, and evaluate trade-offs between, alternative transportation investments, (iv) provides a high degree of confidence as to the extent to which the benefits of the project will exceed the project's costs on a net present value basis, and (v) provides sensitivity analysis to show how changes in key assumptions affect the outcome of the analysis.
Useful	The economic analysis (i) identifies, quantifies, monetizes, and compares the project's expected benefits and costs, but has minor gaps in coverage of benefits and costs or the precise timing of benefits and costs, or fails in some cases to quantify or monetize benefits and costs for which such measures are reasonably available, and (ii) provides a sufficient degree of confidence that the benefits of the project will exceed the project's costs on a net present value basis.
Marginally Useful	The economic analysis (i) identifies, quantifies, monetizes, and compares the project's expected benefits and costs, but has significant gaps in coverage, quantification, monetization, or timing of benefits and costs, or significant errors in its measurement of benefits or costs, and (ii) the Department is uncertain whether the benefits of the project will exceed the project's costs on a net present value basis.
Not Useful	The economic analysis (i) does not adequately identify, quantify, monetize, and compare the project's expected benefits and costs or timing of benefits and costs, (ii) provides little basis for concluding that the benefits of the project will exceed the project's costs on a net present value basis, and (iii) demonstrates an unreasonable absence of data and analysis or poor applicant effort to put forth a robust quantification of net benefits.

A benefit-cost analysis attempts to measure the dollar value of the benefits and the costs to all the members of society (in this context, ''society'' means all residents of the United States) on a net present value basis. The benefits represent a dollar measure of the extent to which people are made better off by the project—that is, the benefits represent the amount that all the people in the society would jointly be willing to pay to carry out the project, and feel as if they had generated enough benefits to justify the project's costs, after accounting for the relative timing of those benefits and costs. In some cases, benefits may be difficult to measure in dollar terms. Applicants must at least describe the nature of each of the major types of benefits described in this guidance. To the extent possible, applicants must also quantify each of those types of benefits (*e.g.,* in terms of the number of users making use of a transportation facility). Finally, applicants must attempt to measure those benefits in dollar terms (*i.e.,* ''monetize'' them). These benefits must then be compared with a dollar measure of the costs of the project. Both benefits and costs must be estimated for each year after work on the project is begun and for a period of time at least 20 years in the future (or the project's useful life, whichever

[11] E.J. Mishan and Euston Quah, *Cost-Benefit Analysis,* 5th edition (New York: Routledge, 2007).

is shorter), and these streams of annual benefits and costs must be discounted to the present using an appropriate discount rate, so that a present value of the stream of benefits and a present value of the stream of costs is calculated.

As a starting point for any analysis, applicants should provide a Project Summary describing the project and what it changes. The Project Summary should provide:

- A description of the current infrastructure baseline (*e.g.,* an existing two-lane road);
- A description of what the proposed project is and how it would change the current infrastructure baseline (*e.g.,* extension of a trolley line);
- A general justification for the project and how it affects the long-term outcomes relative to the current baseline;
- A description of who would be the users of the project or what groups of people would benefit from it; and
- A description of what types of economic effects the project is expected to have.

If an application contains multiple separate projects (but that are linked together in a common objective), each of which has independent utility, the applicant should provide a separate summary (and analysis) for each project.

The summary should also identify the types of societal benefits the project might generate. The applicant should list the types of benefits here and then clearly demonstrate in the analysis how it estimated benefits for each category. The summary should also include the full cost of a project, including Federal, State, local, and private funding, as well as expected operations and maintenance costs, and not simply the requested grant amount or the local amount.

Each application must include in its analysis estimates of the project's expected benefits with respect to each of the five long-term outcomes specified in Section II(A) *(Selection Criteria).* We recognize that it may in some cases be unclear in which of these categories of outcomes a benefit should be listed. In these cases, it is less important in which category a benefit is listed than to make sure that the benefit is listed and measured (but only once). Applicants must demonstrate that the proposed project has independent utility as defined in this Notice. It cannot be a component of a larger project such that, if the larger project were not built, this project would have little or no transportation value (or, if it is part of a larger project, the application must demonstrate that funding for the larger project is committed). If the applicant provides a benefit-cost analysis for a larger project, then it must estimate what portion of the benefits and costs of the larger project apply to the smaller project for which funding is being sought. The following sections describe baselines, affected population, discounting, forecasting, costs, and benefit categories in more detail. The Department expects a thorough discussion of these items in the body of *the analysis.*

Benefit-Cost Analysis vs. Economic Impact Analysis

First, it is important to recognize that a benefit-cost analysis is not an economic impact analysis. Applicants are required to provide a benefit-cost analysis in support of their proposed projects. An economic impact analysis is not a substitute for a benefit-cost analysis.

A benefit-cost analysis attempts to measure the dollar value of the benefits and the costs to all the members of society (in this context, ''society'' means all residents of the United States). The benefits represent a dollar measure of the extent to which people are made better off by the project—that is, the benefits represent the amount that all the people in the society would jointly be willing to pay to carry out the project, and feel as if they had generated enough benefits to justify the project's costs.

An economic impact analysis, on the other hand, typically focuses on local and regional impacts rather than national impacts. Some of the impacts that are counted in an economic impact analysis, such as diversion of economic activity from one region of the country to another, represent gains to one part of the country but losses to another part, so they are not gains from the standpoint of the nation as a whole.

Moreover, economic impact analyses estimate ''impacts'' rather than ''benefits,'' and the ''impacts'' are normally quite different from the ''benefits.'' For example, the total payroll of workers on a project is usually considered one of the ''impacts'' in an economic impact analysis. The total payroll is not a measure of the ''benefits'' of the project, however, for two reasons. First, a payroll is a cost to whoever pays the employees, at the same time that it is a benefit to the employees, so it is not a net benefit. Second, even for the employees, the employees have to work for their wages, so the amount they are paid is not a net benefit to them—it is a benefit only to the extent that they value their wages more than the cost to them of having to be at work every day.

Economic impact analyses also often treat real estate investments induced by a project as one of the economic ''impacts.'' The full value of such an investment is not a ''benefit,'' however, because the benefit of those investments to the community in which they are made is balanced by the cost of the investment to the investor. Because these investments are a cost as well as a benefit, they are not a net benefit for purposes of a benefit-cost analysis.

There is often an element of benefit in these ''impacts.'' A worker who gets a higher-paying job as a result of a transportation investment project benefits if he or she works just as hard as he or she did at his or her previous job but is paid more. Such projects produce benefits by increasing the productivity of labor. A transportation investment project that increases the value and productivity of land and thus induces real estate investment can also provide a benefit, but the benefit must be measured net of the cost of making the real estate investment. Measuring these labor and land productivity effects requires a careful analysis of the local labor market and how that market is changed by the transportation investment. Similarly, measuring the effects of transportation projects on the productivity of land requires a careful netting out of increases in land values that are compensated by costs of real estate investment and increases in land values that in effect capitalize other types of benefits that have already been counted, such as time savings.

In summary, applicants must be careful to measure only the net benefits of a project, and should avoid using software packages that are designed primarily to produce economic impact analyses. An application containing only an economic impact analysis does not meet the program's requirements and may be denied an award for that reason.

Baselines and Alternatives

Applicants should measure costs and benefits of a proposed project against a baseline (also called a ''base case'' or a ''no build'' case). The baseline should be an assessment of the way the world would look if the project did not receive the requested TIGER Discretionary Grant funding. Usually, it is reasonable to forecast that that baseline world resembles the present state. However, it is important to factor in any projected changes (*e.g.,* baseline economic growth, increased traffic volumes, or completion of already planned and funded projects) that would occur even if the proposed project were not funded. In some cases the proposed project already has a financing plan that would allow it to be built, but that involves a slower construction schedule than would occur if it received TIGER Discretionary Grant funding. Or it may be likely that, in the absence of TIGER Discretionary Grant funding, the project would be built later using ordinary funding sources. In these cases, the TIGER Discretionary Grant funding may accelerate completion of the project, but it does not allow a project to be built that would never otherwise have been built. The benefits and costs in this case should thus be limited to the marginal benefits (and marginal costs) of having the project completed in a shorter period of time and including the cost of expending resources on the project sooner than otherwise planned (*i.e.,* a ''now versus later'' comparison).

Baselines also need to be realistic in the transportation assumptions that they make. If a project would construct a short freight rail spur from a railroad mainline to a particular facility, it is unrealistic to assume in the baseline that, in the absence of the project, cargo would be shipped by truck for thousands of miles, whereas the same cargo would be shipped by rail if the project were built. A more realistic baseline would assume that, in the absence of the project, the cargo would be shipped by rail for most of the distance, and then shipped by truck for the relatively short distance over which rail transportation is not available. Baseline assumptions need to incorporate the lowest-cost transportation options that would be available in the absence of the project.

Many projects have multiple parts or multiple phases, only one or two of which would actually receive funding from a TIGER Discretionary Grant. It is important in these cases that both the costs and the benefits pertain to the same portion of the project. If the part or phase of the project funded by a TIGER Discretionary Grant has independent

utility, then the analysis should compare the costs and the benefits of just that part or phase. If the part or phase of the project funded by a TIGER Discretionary Grant does not have independent utility, then the applicant must first demonstrate that funding is committed for the entire project (or for an entire portion of the project, including the TIGER Discretionary Grant-funded portion, that has independent utility). In this case, the applicant should compare the benefits and costs of the entire project (or the entire portion of the project that has independent utility). The applicant must make clear exactly what portions of the project form the basis of the estimates of benefits and costs. It is incorrect to claim benefits for the entire project but only count as costs the costs of the portion of the project funded by the TIGER Discretionary Grant. Thus, it would be incorrect to attribute all the benefits from a new port facility to a TIGER Discretionary Grant when the costs that are counted only cover a portion of the project funded by the TIGER Discretionary Grant, for example, paving a loading area. In some cases, the applicant may choose to allocate the benefits of the project proportionately to the costs of the project that would be funded by the TIGER Discretionary Grant, but this should generally be done only if (1) the TIGER Discretionary Grant funds are commingled with non-TIGER Discretionary Grant funds for a single, non-divisible structure that has independent utility, and (2) the project has sufficient funding in place to be completed as a whole unit. If a project is being funded by multiple Federal, State, and local sources, it would be inappropriate to attribute the full benefit of the project to only one source of funding (such as the local share or the TIGER Discretionary Grant itself).

All costs and benefits of the project should be evaluated, including benefits and costs that fall outside of the jurisdiction sponsoring the project. It is also important that the applicant assume the continuation of reasonable and sound management practices in establishing a baseline. Assuming a baseline scenario in which the owner of the facility does no maintenance on the facility and ignores traffic problems and maintenance is not realistic and will lead to the overstatement of project benefits.

In addition to the baseline, the applicant should present and consider reasonable alternatives in the analysis. Smaller-scale and more focused projects should be evaluated for comparison purposes. For example, if an applicant is requesting funds to replace a pier, it should also analyze the alternative of rehabilitating the current pier. Similarly, if an applicant seeks funds to establish a relatively large streetcar project, it should also evaluate a more focused project serving only the more densely populated corridors or an area.

Affected Population

Applicants should clearly identify the population that the project will affect and measure the number of passengers (for a passenger project) and the amount of freight (for a freight project) affected by the project. If possible, passenger and freight traffic should be measured in passenger-miles and freight ton-miles (and possibly value of freight). If, as is often the case, the forecasted traffic volume is not the same for all years (*e.g.,* projected growth in highway traffic), then the applicant needs to break out the forecasted traffic annually. In some cases, the characteristics of the passenger population or of the freight cargo may be important (*e.g.,* whether the passengers are members of a disadvantaged group, or are spread across a multi-state region, or whether the cargo being shipped is predominantly export traffic). Measures of freight traffic might include growing levels of port calls. In some cases, the relevant population is the volume of traffic that is diverted from one mode to another. Applicants must clearly identify which population will be affected by any particular benefit. For example, as noted above, the affected population that will enjoy travel time savings may be different from the affected population benefiting from reduced shipping costs. Further, the applicant should be realistic as to how the project affects these populations. For example, improving rail access to a wholesale distribution center near an urban area may take some trucks off the road that had been carrying freight from a truck/rail intermodal yard to the wholesale distribution center. However, it is unrealistic to claim benefits from reduced truck traffic all the way from the shipping origin point hundreds or thousands of miles away to the truck/rail intermodal yard, if that traffic would be likely to be moving much of this distance by rail already.

Discounting

Applicants should discount future benefits and costs to present values using a real discount rate (*i.e.,* a discount rate that reflects the opportunity cost of money net of the rate of inflation) of 7 percent, following guidance provided by OMB in Circulars A–4 and A–94 (*http://www.whitehouse.gov/omb/circulars_default/*). Applicants may also provide an alternative analysis using a real discount rate of 3 percent. The latter approach should be used when the alternative use of funds currently dedicated to the project would be other public expenditures, rather than private investment.

As a first step, applicants should present the year-by-year stream of benefits and costs from the project. Applicants should clearly identify when they expect costs and benefits to occur. The beginning point for the year-by-year stream of benefits should be the first year in which the project will start generating costs or benefits. The ending point should be far enough in the future to encompass most or all of the significant costs and benefits resulting from the project (at least 20 years in the future), but not to exceed the usable life of the asset without capital improvement.[12] In presenting these year-by-year streams, applicants should measure them in constant (or ''real'') dollars prior to discounting. Applicants should not add in the effects of inflation to the estimates of future benefits and costs prior to discounting. Once an applicant has generated the stream of costs and benefits in constant dollars, it should then discount these estimates to arrive at a present value of costs and benefits using the real discount rate specified above. The standard formula for the discount factor in any given year is $1/(1 + r)^t$, where ''r'' is the discount rate and ''t'' measures the number of years in the future that the costs or benefits will occur. Infrequently, benefits or costs will be the same in constant dollars for all years. In these limited cases, an applicant can calculate the formula for the present value of an ordinary annuity instead of showing a year-by-year calculation.[13]

Risk and Uncertainty

When the amount and timing of important benefits and costs are uncertain, applicants should identify and address this uncertainty through appropriate quantitative and qualitative analyses. This is especially so if the uncertainty includes the risk of the catastrophic failure of an asset (*e.g.,* a bridge collapse). The applicant's analytical approaches should be consistent with OMB Circular A–94. Circular A–94 directs applicants to characterize the sources and nature of uncertainty. Ideally, applicants should present probability distributions of potential costs and benefits, and net benefits. If point estimates are used to represent uncertain values of costs or benefits, these point estimates should represent expected values of the underlying uncertain values of the costs or benefits. For a distribution of costs or benefits, the expected value can be calculated by weighing each outcome by its probability of occurrence and then summing across all potential outcomes. If risk of a catastrophic failure is present, an applicant may want to take this risk into account by estimating a ''certainty equivalent,'' *i.e.,* a net benefit under conditions of certainty that would be considered equally desirable to a

[12] In some cases the application may use a fixed term of years to analyze benefits and costs (*e.g.,* 20 years), even though the applicant knows that the project will last longer than that and continue to have benefits and costs in later years. In these cases, the project will retain a ''residual value'' at the end of the analysis period. For instance, a new bridge may be expected to have a 100-year life but the analysis period for the benefit-cost analysis might cover only 40 years. In such cases, a residual value can be claimed as a benefit (or cost offset) for the asset at the end of the analysis period. One method to estimate the residual value is to calculate the percentage of the project that will not be depreciated or used up at the end of the analysis period and to multiply this percentage by the original cost of the project. Different components of the project may have different depreciation rates—land typically does not depreciate. The estimated residual value is assigned to the end of the analysis period and should then be discounted to its present value as would any other cost or benefit occurring at that time. Note that a residual value of a project can only be claimed if the project will be kept in operation beyond the end of the analysis period. If the project will be retired at that time, a salvage value (reflecting revenues raised from the decommissioning of the project) can be claimed.

[13] See *http://www.brighthub.com/money/personal-finance/articles/17948.aspx.* For example, 10.594 is the discount factor that would be multiplied by an annual benefit to get the present value of a constant benefit stream over 20 years at a discount rate of seven percent. If the constant annual benefit is $500,000, then the present value of the benefits is $5.297 million. In these limited cases, the applicant must show the calculation of the discount factor of the ordinary annuity formula.

higher net benefit (based on expected values) that is subject to considerable risk.

Forecasting

Benefit-cost analyses of transportation projects almost always depend on forecasts of projected levels of usage (road traffic, port calls, *etc.*). When an applicant is using such forecasts to generate benefit estimates, it must assess the reliability of these forecasts. If the applicant is using outside forecasts, it must provide a citation and an appropriate page number for the forecasts. An applicant should carefully review any outside forecasts for reliability before using them in its analyses. In cases where an applicant is using its own estimates, it should clearly demonstrate in the analysis the methodology it used to forecast affected population (*e.g.,* how it generated traffic volumes for cars and trucks on a highway section). The number of individuals who enjoy the benefits of a project will partly determine the net benefits of the project. Consequently, accurate forecasts are essential to conducting a quality benefit-cost analysis. Applicants should incorporate indirect effects into their forecasts where possible (*e.g.,* induced demand). Applicants should also take great care to match forecasts of usage levels to the corresponding year. For example, using projected traffic levels for 2030 to generate benefits for all the earlier years is incorrect. For more information on forecasting, applicants can refer to the forecasting section of FHWA's Economic Analysis Primer (*http://www.fhwa.dot.gov/infrastructure/asstmgmt/primer06.cfm*). While produced for analysis of highway projects, the primer is a good source of information on issues related to all transportation forecasting.

Costs

As noted above, the estimate of costs must pertain to the same project as the estimate of benefits. If the TIGER Discretionary Grant is to pay for only part of the project, but the project is indivisible (*i.e.,* no one part of the project would have independent utility), then the benefits of the whole project should be compared to the costs of the whole project, including costs paid for by State, local, and private partners other than the Federal government. Applicants may not claim that the TIGER Discretionary Grant ''leverages'' the financial contributions of other parties, and therefore that all the benefits of the project are attributable to the TIGER Discretionary Grant, even though the TIGER Discretionary Grant only pays for part of the project.

The analysis of costs should be equally as rigorous as the analysis of benefits. The lack of a useful analysis of expected project costs may be a basis for denying the award of a TIGER Discretionary Grant to an applicant. In general, applicants should use a life-cycle cost analysis approach in estimating the costs of the project. The Department expects applicants to include operating, maintenance, and other life-cycle costs of the project, along with capital costs. In addition to construction costs, other direct costs may include design and land acquisition. If the time period considered in the analysis is long enough to require the rehabilitation of the facility during the period of analysis, then the costs of that rehabilitation should be included. External costs, such as noise, increased congestion, and environmental pollutants resulting from the use of the facility or related changes in usage on other facilities in the same network, should be considered as costs in the analysis. Additionally, applicants should include, to the extent possible, costs to users during construction, such as delays and increased vehicle operating costs associated with work zones or detours. The applicant should correctly discount annual costs to arrive at a present value of the project's cost.

Types of Benefits—Livability

There are several potential benefits that a project could generate that affect livability. The most important aspect of livability is accessibility to non-single-occupancy vehicle modes of transportation, such as transit, bicycle paths, and sidewalks. Measuring the benefits of increased accessibility should start with a quantitative measure of the increase in accessibility—how many people will have access to these alternative modes who did not have access before? The analysis should go on to estimate how many people are actually likely to use these newly available transportation modes and how much of their existing single-occupancy vehicle travel are those people likely to divert to these alternative modes. Finally, the analysis should attempt to estimate the monetary value that people place on access to these newly available transportation modes. In some cases, monetary values may be estimated based on existing market transactions—*e.g.,* bicycle rentals. In others, differentials in the market values of land or rents between residences and businesses that are already easily accessible (*e.g.* < 0.5 miles) to these modes and those that are in the same areas but not easily accessible (*e.g.* > 0.5 miles) can be used as a proxy estimate of the value of this access. In other cases, no objective market values are available, and the applicant should make the best subjective estimate it can of the average value that this accessibility has to those who now have access to these alternative modes. One useful source of guidance on measuring benefits of bicycle facilities (particularly for understanding demand estimation) is the Transportation Research Board's National Cooperative Highway Research Program Report 552, *Guidelines for Analysis of Investments in Bicycle Facilities* (Washington: TRB, 2006) (*available at http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_552.pdf*).

Transit and bicycle paths may provide greater accessibility to alternative transportation modes, but they will not actually enhance livability unless people actually want to use them, and the desire to use them will depend in part on where these modes go and on the amenities provided with them. An important part of accessibility is making sure not only that people's residences are accessible to these modes, but that the modes connect to workplaces, schools, shopping, and other desired destinations. Assessments of enhanced accessibility should describe where these alternative modes go as well as where they start.

Land use changes are also an important aspect of livability. When people live closer to their workplaces, their schools, and shopping, they will be more likely to use these alternative transportation modes. Transportation changes that encourage more mixed-use land development (where residences are intermixed with workplaces and shopping) will shorten the length of travel and encourage more use of non-highway modes. The analysis should evaluate the extent to which the proposed transportation project will encourage these changes in land use and be coordinated with zoning changes and other public and private investments.

Changes in land use that result in shorter travel distances can result in long-term travel time savings, and the quantitative extent of these time savings can be estimated. Values of time can then be used to estimate the monetary value of these time savings. The applicant should propose a subjective estimate of the monetary value of land use changes. Land use changes can also reduce the total cost of transportation for the affected population, so applicants should attempt to measure the effects of the project and associated land use changes on average household transportation expenditures.

In using differentials in property values or rents to measure the value of changes in accessibility, applicants must identify other factors that might have caused property values and/or rents to change and isolate the portion of the change that is attributable to the change in accessibility. Applicants must also be careful to avoid double-counting. If the applicant has already counted reductions in travel time as a benefit, the value of those reductions in travel time may get capitalized in changes in property values or rents, and the applicant must be careful not to count those benefits again as part of the change in property values.

Finally, an important aspect of livability is the availability of transportation to disadvantaged communities, such as low-income people, non-drivers, people with disabilities, and senior citizens. Applicants should assess the extent to which their projects will improve transportation opportunities and quality of life for members of these disadvantaged communities. While there may not be well-defined methodologies for assigning monetary values to these enhancements to accessibility, applicants should attempt to measure the size of the disadvantaged community affected and make subjective judgments of the monetary values that should be assigned to these improvements.

Types of Benefits—Economic Competitiveness

Economic competitiveness benefits might include reduced operating costs due to infrastructure improvements. In some cases, a project produces economic competitiveness benefits because the existing users of the facility will have lower operating costs after the improvement is completed. In other cases, the economic competitiveness benefits result from modal diversion—users shifting

from a higher-cost transportation mode to a lower-cost transportation mode when the quality of service on the lower-cost mode becomes more competitive. In this case, the applicant should demonstrate clearly what the basis is of any estimated modal diversion. In estimating operating cost savings, it is important to avoid double-counting. For example, applicants must not count both the reductions in fuel costs and the overall reductions in operating costs, because fuel costs are part of operating costs. For freight projects, economic competitiveness benefits may be particularly significant if the project reduces the costs of transporting freight that will be exported.

One particular form of reduced operating costs is travel time savings. Road improvements or other projects whose purpose is to relieve congestion frequently generate travel time savings for travelers and shippers that contribute to economic competitiveness and quality of life to non-business travelers. Where this is the case, applicants should clearly demonstrate how the travel time savings are calculated and should account for induced travel demand to the extent practical or applicable. If travel time savings vary over time, the applicant must clearly show savings by year. Once the applicant generates its estimate of hours saved, it should apply the Department's guidance on the value of time to those estimates (*http://ostpxweb.dot.gov/policy/reports.htm*) to monetize them for both business and non-business travelers. The value of time saving is often among the largest benefit components of transportation capacity enhancement projects.[14] Transportation projects may also enhance economic competitiveness by improving the reliability of travel times (*i.e.,* reducing the variation in travel times), in addition to the benefits from a reduction in the average travel time.

Freight-related projects that improve roads, rails, and ports frequently generate savings to carriers (*e.g.,* fuel savings and other operating cost savings) that they may pass on in whole or in part to shippers by way of lower freight rates. Shippers may, in turn, pass on, in whole or in part, these savings to consumers. If applicants are projecting these savings as benefits, they need to carefully demonstrate how the proposed project would generate such benefits. However, applicants must be careful to count the value of the fuel and other operating cost savings (however allocated among carriers, shippers, and consumers) only once in the benefit-cost analysis; it cannot be re-counted in full each time it transfers from one group to the other as this would entail double-counting of the same benefit.

Applicants should also guard against analysis that double-counts other kinds of benefits. Analysis should distinguish between real benefits and transfer payments. Benefits reflect real resource usage and overall benefits to society, while transfers represent payments by one group to another and do not represent a net increase in societal benefits. Employment or output multipliers that purport to measure secondary effects should not be included as societal benefits because these secondary effects are generally the same (per dollar spent) regardless of what kind of project is funded.

As noted earlier in this Appendix (see *Benefit-Cost Analysis* vs. *Economic Impact Analysis*), applicants must be extremely cautious about including job creation and economic development impacts as societal benefits in the benefit-cost analysis. In the case of job creation, for example, every job represents both a cost to the employer (paying a wage) and a benefit to the employee (receiving a wage), so it is a transfer payment, rather than a net benefit. However, if a project increases the productivity of labor, then the applicant can count the increased productivity as a benefit. For example, if the project allows workers working at low-productivity jobs to switch to high-productivity jobs, then the increase in their productivity can be counted as a benefit. But the applicant needs to demonstrate rigorously how such productivity benefits are estimated and the exact time period over which the productivity benefits occur. Simply asserting these gains is inadequate.

With respect to economic development, estimates of capital investments or property tax revenues are not legitimate benefits in a benefit-cost analysis. A property tax is a benefit to the tax assessor, but it is a cost to the taxpayer. An applicant can potentially claim an increase in the value of land as a benefit if the transportation project increases the value and productivity of the land. However, the applicant needs to count the increase in the value of the land carefully to avoid double counting and transfer payments. For example, if the property value goes up by the exact same value as the developer's investment, then this is not a benefit. Property value increases over and above the developer's investment may potentially be a benefit from the project. However, if this property value increase is due to improved travel times that the applicant has already included as a benefit then there is no additional benefit here. The analysis should also consider to what extent an increase in land values induced by the project in one area causes a reduction in land values in some other area. Only the net increase in land value can be counted as a benefit. Applicants must carefully net out any embedded time savings in the property value increase before claiming any benefits. Simply asserting that there is a property tax increase net of time savings is inadequate. The Department expects any applicant claiming these types of benefits to provide a rigorous justification of the benefit that shows how it is derived from the project (rather than from some other non-project investment) and that shows how increases in property values attributable to other benefits (such as travel time savings) have been deducted. Applicants should note that any claimed societal benefit from a property value increase is only a one-time stock benefit. Applicants can not treat it as a stream of benefits accruing annually.

Types of Benefits—Safety

Road projects can also improve the safety of transportation. A well-designed project can reduce fatalities and injuries as well as reduce other crash costs, such as hazardous materials releases. The applicant should clearly demonstrate how the project will improve safety. For example, to claim a reduction in fatalities, an applicant must clearly demonstrate how the existence of the project would have prevented the types of fatalities that commonly occur in that area. Applicants should use crash causation factors or similar analyses of causes of crashes to show the extent to which the type of improvements proposed would actually reduce the likelihood of the kinds of crashes that actually had occurred. Alternatively, when only a few cases are involved, the applicant should provide a description of the incidents and demonstrate the linkage between the proposed project and crash reduction. In some cases, safety benefits may occur because of modal diversion from a less safe mode to a safer mode. When this type of benefit is claimed, the applicant should provide a clear analysis of why the forecasted modal diversion will take place. Once the applicant has established a reasonable count of the incidents that are likely to be prevented by the project, it should apply the Department's guidance on value of life and injuries (*http://ostpxweb.dot.gov/policy/reports.htm*) to monetize them. Note that these unit values apply to the maximum Abbreviated Injury Scale (AIS). In instances where crash injury reports are based on the KABCO scale (often used for law enforcement reporting), it is necessary to convert these reported crash and injury data into AIS before applying the unit costs. The KABCO–AIS Conversion Table provided below should assist in this task.

[14] There is a growing body of academic research that attempts to value the improved reliability of travel time in addition to travel time savings. Improved travel time reliability resulting from a project can influence business inventory costs and travel time allotted for unexpected delays. Applicants attempting to quantify the value of improved reliability of a transportation project as part of a benefit-cost analysis should carefully define how they have measured and valued it for the project, with particular attention to its relationship to estimates and valuations of travel time saving.

KABCO-AIS Conversion Table (Excluding Fatalities in Non-Fatal Injury Codes)

	O	C	B	A	K	Injured	Unknown
	No Injury	Poss Inj	Non-Incapacitating	Incapacitating	Killed	Severity Unknown	If Injured
AIS 0	0.92534	0.23437	0.08347	0.03437	0	0.21538	0.43676
AIS 1	0.07257	0.68946	0.76843	0.55449	0	0.62728	0.41739
AIS 2	0.00198	0.06391	0.10898	0.20908	0	0.104	0.08872
AIS 3	0.00008	0.01071	0.03191	0.14437	0	0.03858	0.04817
AIS 4	0	0.00142	0.0062	0.03986	0	0.00442	0.00617
AIS 5	0.00003	0.00013	0.00101	0.01783	0	0.01034	0.00279
Fatality	0	0	0	0	1	0	0

Source: NHTSA, July 2011.

Types of Benefits-State of Good Repair

Many infrastructure projects that improve the state of good repair of transportation infrastructure can reduce long-term maintenance and repair costs. These benefits are in addition to the benefits of reductions in travel time, shipping costs, and crashes which the applicant should account for separately. Applicants should include these maintenance and repair savings as benefits. Improving state of good repair may also reduce operating costs and congestion by reducing the amount of time that the infrastructure is out of service due to maintenance and repairs, or may prevent a facility (such as a bridge) from being removed from service entirely (*i.e.* low-volume facilities that would cost too much to replace). In the latter case, the analysis should include a reasonable assessment of the cost that closing the facility would have on system users who would be required to take longer and more circuitous routes, as well as the probability (and likely time in the future) when the bridge would need to be closed even if sound maintenance practices had been pursued. Improving state of good repair may also reduce user costs if, for example, the roughness of a road reduces travel speeds or increases damage to vehicles. Improving state of good repair can also have safety benefits. The application should also consider differences in maintenance and repair costs when comparing different project alternatives. For example, an applicant can compare the maintenance costs that would be required after rehabilitating an existing pier with those that would be required after building a new one. As part of the data that go into estimating the benefits of improving the state of good repair, applicants should provide accepted metrics for assessing an asset's current condition. For example, applicants can use Present Serviceability Ratings (PSR) to discuss pavement condition and bridge sufficiency ratings to discuss the condition of a bridge. As discussed in the section on costs, the Department expects applicants to consider the life-cycle costs of the project when making these comparisons.

Types of Benefits—Sustainability

Transportation can generate environmental costs in the form of emissions of ''criteria pollutants'' (*e.g.,* SO_X, NO_X, and particulates) and from the emission of greenhouse gases, such as carbon dioxide (CO_2). Increased traffic congestion results in increased levels of these emissions. Transportation projects that reduce congestion can reduce these emissions and produce societal benefits given reduced idling and otherwise constant vehicle miles travelled. Also, transportation projects that encourage transportation users to shift from more-polluting modes to less-polluting modes can similarly reduce emissions. Applicants claiming these types of benefits must clearly demonstrate and quantify how the project will reduce emissions. Once an applicant has adequately quantified levels of emission reductions, it should estimate the dollar value of these benefits. Sources of information on the social benefits of reducing criteria pollutant emissions are discussed in the table at the end of this Appendix and in Chapter VIII of the Final Regulatory Impact Analysis of the National Highway Traffic Safety Administration's rulemaking on Corporate Average Fuel Economy for MY 2011 Passenger Cars and Light Trucks (*http://www.nhtsa.gov/DOT/NHTSA/Rulemaking/Rules/Associated%20Files/CAFE_Final_Rule_MY2011_FRIA.pdf*).

The Interagency Working Group on Social Cost of Carbon has recently issued its guidance on ''*Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866''* (*http://www.epa.gov/oms/climate/regulations/scc-tsd.pdf*). Table A1 (''Annual SCC Values: 2010–2050 (in 2007 dollars)'') in the appendix of the guidance lays out a range of values to use for monetizing the social cost of carbon at various years in the future and at various discount rates. Applicants should clearly indicate how and to what degree calculations of benefits in their analyses are based on these assumed values of CO_2 emissions reduction.

Transparency and Reproducibility of Calculations

Applicants should make every effort to make the results of their analyses as transparent and reproducible as possible. Applicants should clearly set out basic assumptions, methods, and data underlying the analysis and discuss any uncertainties associated with the estimates. Applicants should attempt to describe the degree of uncertainty in key estimates, such as the level of traffic or the total costs of the project. Applicants should show what the effect of this uncertainty is on the probability of benefits exceeding costs, and describe what actions they might take to mitigate these risks.

A Department reviewer reading the analysis should be able to understand the basic elements of the analysis and the way in which the applicant derived the estimates. It is inadequate for the applicant only to provide links to large documents or spreadsheets as sources. The Department expects all outside data sources to be clearly cited with a page number (or cell number, for a spreadsheet) provided for the cited source. If the application refers the reader to more detailed documentation to explain how the calculations were done, that documentation must go beyond merely providing spreadsheets. It must include a thorough verbal description of how the calculation was done, including references to tabs and cells in the spreadsheet. This verbal description should include specific sources for all the numbers in the spreadsheet that are not calculated from the spreadsheet itself.

If an applicant uses a ''pre-packaged'' economic model to calculate net benefits, the applicant should provide annual benefits and costs by benefit and cost type for the entire analysis period (including forecast year traffic volumes). In any case, applicants must provide a detailed explanation of the assumptions used to run the model (*e.g.,* peak traffic hours and traffic volume during peak hours, mix of traffic by cars, buses, and trucks, *etc.*). The applicant must provide enough information so that a Department reviewer can follow the general logic of the estimates (and, in the case of spreadsheet models, reproduce them).

Ideally, the applicant should be able to summarize the results of all pertinent data and cost and benefit calculations in a single spreadsheet tab (or table in *Word*). A Department reviewer should be able to understand the calculations in spreadsheet models both from directions in the spreadsheet and any accompanying text. The following provides a simplified example for expository purposes of discounted costs and benefits from a road project providing travel time savings only to local travelers over the course of five years following a one-year period of construction.

Calendar Year	Project Year	Affected Drivers	Travel Time Saved (hours) [1]	Total Value of Time Saved ($2010)[2]	Initial Costs ($2010)	Operations & Maintenance Costs ($2010)[3]	Undiscounted Net Benefits	Discounted at 7%
2011	1				$38,500,000	$6,000,000	-$44,500,000	-$41,588,785
2012	2	80,000	1,040,000	$14,248,000		$700,000	$13,548,000	$11,833,348
2013	3	95,000	1,235,000	$16,919,500		$700,000	$16,219,500	$13,239,943
2014	4	100,000	1,300,000	$17,810,000		$700,000	$17,110,000	$13,053,137
2015	5	102,000	1,326,000	$18,166,200		$700,000	$17,466,200	$12,453,159
2016	6	109,000	1,417,000	$19,412,900		$700,000	$18,712,900	$12,469,195
NPV								$21,459,998
1. Number of drivers times three minutes a day (3/60 hours) over 260 workdays								
2. Hours at $13.70 per hour ($2010)								
3. Includes costs from delays to users during construction								

Most applicant analyses will be more complicated than this example and will likely include several benefit categories. However, the summary cost and benefit data should be as transparent and as easy to follow and replicate as the example above.

The following table summarizes key values for various types of benefits and costs that the Department recommends that applicants use in their benefit-cost analyses. Benefits and costs for any reliable analysis are not only limited to this table. The applicant should provide documentation of sources and detailed calculations for monetized benefit/cost values of additional categories. Similarly, applicants using different values for the benefit/cost categories below should provide sources, calculations, and rationale for divergence from recommended values.

Benefit/Cost Category	Recommended Monetized Values	Reference
Value of Statistical Life	$6,200,000 per fatality ($2011)	*Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses – 2011 Revision* (2011) http://ostpxweb.dot.gov/policy
Value of injuries	**AIS Level / Severity / Fraction of VSL / Unit value ($2011)** AIS 1 / Minor / 0.003 / $ 18,600 AIS 2 / Moderate / 0.047 / $ 291,400 AIS 3 / Serious / 0.105 / $ 651,000 AIS 4 / Severe / 0.266 / $ 1,649,200 AIS 5 / Critical / 0.593 / $ 3,676,600 AIS 6 / Unsurvivable / 1 / $ 6,200,000	*Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses – 2011 Revision* (2011) http://ostpxweb.dot.gov/policy
Property Damage Only (PDO)	$3,285 per vehicle crash ($2010)	*The Economic Impact of Motor Vehicle Crashes 2000* http://www.nhtsa.gov/DOT/NHTSA/Communication%20&%20Consumer%20Information/Articles/Associated%20Files/EconomicImpact2000.pdf
Value of Travel Time	**Category / Surface Modes / Air Travel / Truck Drivers** Local Travel Personal / 50% / -- / -- Business / 100% / -- / 100% Intercity Travel Personal / 70% / 70% / -- Business / 100% / 100% / 100% *Value of travel time is calculated as a percentage of area median income. Applicants should provide specific source of income figures – preferably most recent Census or American Communities Survey.*	*Departmental Guidance for the Valuation of Travel Time in Economic Analysis* http://ostpxweb.dot.gov/policy
Value of Emissions	**Emission type / $ / metric ton ($2007)** Carbon dioxide ($CO_2$) / (varies)* Volatile Organic Compounds (VOCs) / $ 1,700 Nitrogen oxides (NOx) / $ 4,000 Particulate matter (PM) / $ 168,000 Sulfur dioxoide (SOx) / $ 16,000 * *Use appropriate value from Table A-1 ("Annual SCC Values 2010-2050"), page 39,* Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 *(February 2010).*	*Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (February 2010), page 39, Table A-1 "Annual SCC Values 2010-2050 (in 2007 dollars)" http://www.epa.gov/oms/climate/regulations/scc-tsd.pdf *Corporate Average Fuel Economy for MY2011 Passenger Cars and Light Trucks* (March 2009), page VIII-60, Table VIII-5 "Economic Values for Benefits Computations (2007$)" http://www.nhtsa.gov/DOT/NHTSA/Rulemaking/Rules/Associated%20Files/CAFE_Final_Rule_MY2011_FRIA.pdf

Applications (Stage 2) for TIGER Discretionary Grants must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and apply can be found at *http://www.grants.gov.* If interested parties experience difficulties at any point during registration or application process, please call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST.

Registering with Grants.gov is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application by the deadlines specified. Applications will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions. In order to apply for TIGER Discretionary Grant funding under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following:

1. *Acquire a DUNS Number.* A DUNS number is required for Grants.gov registration. The Office of Management and

Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS (Data Universal Numbering System) number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dunandbradstreet.com.*

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and sub-recipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of relevant application deadlines. Information about CCR registration procedures can be accessed at *http://www.ccr.gov.*

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Complete your AOR profile on Grants.gov and create your username and password. You will need to use your organization's DUNS Number to complete this step. For more information about the registration process, go to *http://www.grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for your AOR from the E-Business Point of Contact (E–Biz POC).* The E-Biz POC at your organization must log in to Grants.gov to confirm you as an AOR. Please note that there can be more than one AOR for your organization.

5. *Search for the Funding Opportunity on Grants.gov.* Please use the following identifying information when searching for the TIGER funding opportunity on Grants.gov. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is 20.933, titled Surface Transportation Infrastructure Discretionary Grants for Capital Investments II.

6. *Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement.* Within 24–48 hours after submitting your electronic application, you should receive an e-mail validation message from Grants.gov. The validation message will tell you whether the application has been received and validated or rejected, with an explanation. You are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

Note: When uploading attachments please use generally accepted formats such as .pdf, .doc, and .xls. While you may imbed picture files such as .jpg, .gif, .bmp, in your files, please do not save and submit the attachment in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

Experiencing Unforeseen Grants.gov Technical Issues

If you experience unforeseen Grants.gov technical issues beyond your control that prevent you from submitting your application by the deadline of October 31, 2011, at 5 p.m. EDT, you must contact Howard Hill at 202–366–0301 or John Kennedy at *john.kennedy@dot.gov* within 24 hours after the deadline and request approval to submit your application. At that time, DOT staff will require you to e-mail the complete grant application, your DUNS number, and provide a Grants.gov Help Desk tracking number(s). After DOT staff review all of the information submitted as well as contacts the Grants.gov Help Desk to validate the technical issues you reported, DOT staff will contact you to either approve or deny your request to submit a late application. If the technical issues you reported cannot be validated, your application will be rejected as untimely.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

Appendix C: Additional Information on Project Readiness Guidelines

As applicants develop their applications, there are some guidelines on project readiness that they should consider. The TIGER Discretionary Grant funds are available for a limited period of time (DOT's ability to obligate the funds expires after September 30, 2013), and DOT may be limited as to when they may obligate the TIGER Discretionary Grant funds to a project if it is not far enough along in the project development process. The application package should provide concrete evidence of project milestones, financial capacity and commitment in order to support project readiness. Each operating administration with the responsibility for obligating the TIGER Discretionary Grant funds has its own regulations, policies, and procedures that they may apply for projects that have been selected for TIGER Discretionary Grant funds. In some cases, an operating administration may obligate a portion of the overall amount of funds that an applicant has been selected to receive so that such an applicant may use that portion of the TIGER Discretionary Grant funds for eligible pre-construction activities, delaying the balance of the obligation of funds until all pre-construction requirements have been completed.

The guidelines below provide additional details about some of these pre-construction steps if a project element is for pre-construction activities, or requirements before the total award is obligated (including, but not limited to, planning requirements, environmental approvals, right-of-way acquisitions, and design completion) and suggests milestones each project should aim to achieve in order to obligate the full amount of awarded TIGER Discretionary Grant funds, in advance of the obligation deadline of September 30, 2013. Applicants should demonstrate that they can reasonably expect to complete all of these pre-construction steps if a project element is for pre-construction activities, or requirements before the total award is obligated no later than June 30, 2013 so that all the TIGER Discretionary Grant funds are obligated in advance of or by the September 30, 2013 statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated. DOT may reallocate unobligated TIGER Discretionary Grant funds towards projects that are ready to use TIGER Discretionary Grant funds if a project is not ready for DOT to obligate all TIGER Discretionary Grant funds before the September 30, 2013, statutory deadline. Applicants that are unfamiliar with, or have questions about, the requirements that a proposed project or projects may need to complete in order for the operating administration to obligate TIGER Discretionary Grant funds may contact *TIGERGrants@dot.gov* with questions. The below information is not an exhaustive list of the requirements that a project may need to comply with in order for TIGER Discretionary Grant funds to be obligated by the operating administration that is administering the TIGER Discretionary Grant.

State and Local Planning: Project activities that are focused on refining scope and completing Federal environmental reviews are eligible capital expenses under the TIGER Discretionary Grants Program and are an essential part of project development. A project that receives TIGER Discretionary Grant funds may be required to be approved by the Metropolitan Planning Organization or State in the Long Range Plans and Transportation Improvement Program (TIP)/Statewide Transportation Improvement Program (STIP). Applicants should take steps to ensure that the project will be included in the relevant plan if the project is required to be included in such planning documents before an operating administration may obligate funds to the project.

If the project is not included in the relevant planning documents at the time the TIGER application is submitted, applicants should submit a certification from the appropriate planning agency that actions are underway at the time of application to include the project in the relevant planning document. If the obligation of TIGER Discretionary Grant funds for construction or other activities is

contingent on the project being included in the relevant planning documents, applicants should demonstrate they can reasonably expect to have the project included in such planning documents by March 30, 2013. We suggest the March 30 milestone since applicants should demonstrate in their project schedule that all additional, necessary pre-construction steps if a project element is for pre-construction activities, or requirements before the total award is obligated will be complete on or before June 30, 2013, and planning must be complete before other pre-construction or other activities can be completed. DOT is suggesting these dates so that all the TIGER Discretionary Grant funds will be obligated in advance of the September 30, 2013, statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated. The applicant should provide a schedule demonstrating when the project will be added to the relevant planning documents.

Environmental Approvals: Projects should have received all environmental approvals, including satisfaction of all Federal, State and local requirements and completion of the National Environmental Policy Act (''NEPA'') process at the time the application is submitted or should demonstrate, through their project schedule, that receipt of NEPA approval, and all additional, necessary pre-construction steps if a project element is for pre-construction activities, or other approvals can occur by June 30, 2013, so that the TIGER Discretionary Grant funds will be fully obligated in advance of the September 30, 2013, statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated.

If the obligation of TIGER Discretionary Grant funds for construction or other activities is contingent on completion of other approvals that can only take place after the environmental approvals process, the applicant should demonstrate, through their project schedule, that they can reasonably expect to obtain all environmental approvals by March 30, 2013, or other date sufficiently in advance of June 30, 2013. Like planning, the environmental approvals must be obtained prior to completing other pre-construction steps if a project element is for pre-construction activities, or other activities. We are suggesting the March 30 date for environmental approvals since all pre-construction steps if a project element is for pre-construction activities, or other activities should be completed by June 30, 2013, so that the TIGER Discretionary Grant funds will be fully obligated in advance of the September 30, 2013, statutory deadline. DOT also wants to ensure that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated, because it may be difficult to complete environmental and regulatory review as well as any other necessary pre-construction steps if a project element is for pre-construction activities, or other activities that must be completed before funds can be obligated for construction or other activities that will fully obligate the TIGER funding.

To demonstrate that this suggested milestone is achievable, applicants should provide information about the anticipated class of action, the budget for completing NEPA, including hiring a consultant if necessary, and a schedule that demonstrates when NEPA will be complete. The schedule should show how the suggested milestones described in this section will be complied with, and include any anticipated coordination with Federal and State regulatory agencies for permits and approvals. The budget should demonstrate how costs to complete NEPA factor into the overall cost to complete the project. The budget and schedule for completing NEPA should be reasonable and be comparable to a budget and schedule of a typical project of the same type. The applicant should provide evidence of support based on input during the NEPA process from State and local elected officials as well as the public. Additionally, the applicant should provide environmental studies or other documents (preferably by way of a Web site link) that describe in detail known potential project impacts and possible mitigation for these impacts. The applicant should supply sufficient documentation for DOT to adequately review the project's NEPA status.

Right-of-Way and Design: If the obligation of TIGER Discretionary Grant funds for construction or other activities by an operating administration may be contingent on completion of right-of-way acquisition and final design approval, applicants should demonstrate, through their project schedule, that they reasonably expect to have right-of-way and design completed, and completion of any other needed pre-construction steps if a project element is for pre-construction activities, or other approvals by June 30, 2013, so that the TIGER Discretionary Grant funds will be fully obligated in advance of or by the September 30, 2013, statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated. If the obligation of TIGER Discretionary Grant funds for construction or other activities is contingent on the project completing right-of-way acquisition and design, and additional approvals contingent on completion of right of way acquisition and design, applicants should demonstrate, through their project schedule, they can reasonably expect to have right-of-way acquisition and design completed, along with the additional required approvals by June 30, 2013, so that the TIGER Discretionary Grant funds will be fully obligated in advance of or by the September 30, 2013, statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated. Applicants should submit a reasonable schedule of when right-of-way (if applicable), design, and any other required approvals are expected to be obtained. Applicants may expect that DOT may obligate TIGER funds for right-of-way and design completion only after planning and environmental approvals are obtained.

Completion of Obligation: Applicants should plan to have all necessary pre-construction or other approvals and activities completed by June 30, 2013, so that the TIGER Discretionary Grant funds will be fully obligated in advance of the September 30, 2013, statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated. In some instances, DOT may not obligate for construction or other activities until all planning and environmental approvals are obtained and right-of-way and final design are complete. If a project is selected for a TIGER Discretionary Grant and the TIGER Discretionary Grant funding will be used to complete all of these activities, DOT may obligate the funding in phases, in accordance with the laws, regulations, and policies of the operating administration that is administering the grant.

* * * * *

Issued on: August 9, 2011.

Ray LaHood,

Secretary.

[FR Doc. 2011–20577 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Surface Transportation Environment and Planning Cooperative Research Program (STEP)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Environment and Planning Cooperative Research Program (STEP). The FHWA anticipates that the STEP or a similar program to provide resources for national research on issues related to planning, environment, and realty will be included in future surface transportation legislation. In Fiscal Year (FY) 2012, the FHWA expects to seek partnerships that can leverage limited research funding in the STEP with other stakeholders and partners in order to increase the total amount of resources available to meet the Nation's surface transportation research needs. The purpose of this notice is to announce the STEP implementation strategy for FY 2012 and to request suggested lines of research for the FY 2012 STEP via the STEP Web site at *http://www.fhwa.dot.gov/hep/step/index.htm* in anticipation of future surface transportation legislation.

DATES: Suggestions for lines of research should be submitted to the STEP Web site on or before November 10, 2011.

FOR FURTHER INFORMATION CONTACT: Lucy Garliauskas, Director, Office of Human Environment, (202) 366–2047, *Lucy.Garliauskas@dot.gov* or Adam Sleeter, Office of the Chief Counsel, (202) 366–8839; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov/* and the Government Printing Office's Web site at *http://www.access.gpo.gov/.*

Background

Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005), established the Surface Transportation Environment and Planning Cooperative Research Program in section 507 of Title 23, United States Code. The FHWA anticipates that the STEP or a similar program to provide resources for national research on issues related to planning, environment, and realty will be included in future surface transportation legislation. The general objective of the STEP is to improve understanding of the complex relationship between surface transportation, planning, and the environment.

The SAFETEA–LU provided $16.875 million per year for FY 2006–2009 to implement this cooperative research program. Due to obligation limitations, rescissions, and congressional designation of Title V Research in SAFETEA–LU, on average $14.5 million of the $16.875 million authorized was available each fiscal year.

The STEP is the primary source of funds for FHWA to conduct research and develop tools and technologies to advance the state of the practice regarding national surface transportation and environmental decisionmaking. In FY 2012, the FHWA expects to seek partnerships that can leverage limited research funding in the STEP with other stakeholders and partners in order to increase the total amount of resources available to meet the nation's surface transportation research needs.

The FY 2012 STEP will support the implementation of a national research agenda that includes:

(1) Conducting research to develop climate change mitigation, adaptation and livability strategies;

(2) Developing and/or supporting accurate models and tools for evaluating transportation measures and developing indicators of economic, social, and environmental performance of transportation systems to facilitate alternative analysis;

(3) Developing and deploying research to address congestion reduction efforts;

(4) Developing transportation safety planning strategies for surface transportation systems and improvements;

(5) Improving planning, operation, and management of surface transportation systems and rights-of-way;

(6) Enhancing knowledge of strategies to improve transportation in rural areas and small communities;

(7) Strengthening and advancing State/local and tribal capabilities regarding surface transportation and the environment;

(8) Improving transportation decisionmaking and coordination across international borders;

(9) Improving state of the practice regarding the impact of transportation on the environment;

(10) Conducting research to promote environmental streamlining/stewardship and sustainability;

(11) Disseminating research results and advances in state of the practice through peer exchanges, workshops, conferences, etc;

(12) Meeting additional priorities as determined by the Secretary; and

(13) Refining the scope and research emphases through active outreach and in consultation with stakeholders.

The FHWA is issuing this notice to: (1) To announce the STEP Implementation Strategy for the FY 2012 STEP in anticipation of future surface transportation legislation, and (2) to solicit comments on proposed research activities to be undertaken in the FY 2012 STEP via the STEP Web site. The STEP Implementation Strategy can be found at *http://www.fhwa.dot.gov/hep/step/about_step/strategy/.* That Strategy updates information on the graphs and charts regarding historical planning and environment research funding, and adds information about the proposed FY 2012 STEP including proposed funding levels, goals, and potential research activities. We invite the public to visit this Web site to obtain additional information on the STEP, as well as information on the process for forwarding comments to the FHWA regarding the STEP implementation plan. The URL for the STEP Web site is: *http://www.fhwa.dot.gov/hep/step/.*

The FHWA will use this Web site as a major mechanism for informing the public regarding the status of the STEP.

Authority: 23 U.S.C. 507.

OMB Approval for Specific Forms, Surveys, Questionnaires: Burden Statement

This collection of information is voluntary and will be used to identify potential research for the creation of a research plan for the FHWA STEP Program. Public reporting burden is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. No confidential information will be collected; therefore, no assurances of confidentiality will be provided. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 2125–0627 (Expiration 6/30/14). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Authority: 5 CFR 1320.8.

Issued on: August 8, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–20506 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0177]

Agency Information Collection Activities; Request for Comment; Extension of an Information Collection: Hours of Service (HOS) of Drivers Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995

(PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests OMB approval to revise and extend an existing ICR entitled, ''Hours of Service (HOS) of Drivers Regulations.'' The HOS rules require most commercial motor vehicle (CMV) drivers to maintain in the CMV an accurate record of duty status (RODS) in either paper or electronic form. The Agency, effective June 4, 2010, authorized the use of electronic on-board recorders (EOBRs) to create driver RODS. This ICR estimates, for the first time, the PRA burden of motor carriers *voluntarily* directing their drivers to employ EOBRs. This ICR promotes safety in CMV operations by assisting motor carriers and enforcement officials in monitoring compliance with the HOS rules. On June 6, 2011, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR (76 FR 32388). One comment was received.

DATES: Please send your comments by September 12, 2011. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2011–0177. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov*, faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert F. Schultz, Jr., FMCSA Driver and Carrier Operations Division. *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Hours of Service (HOS) of Drivers Regulations.

OMB Control Number: 2126–0001.

Type of Request: Revision and extension of a currently-approved information collection.

Respondents: Motor Carriers, Drivers of CMVs.

Estimated Annual Respondents: 4.93 million [4.60 million drivers + 0.33 million active motor carriers].

Estimated Time per Response: A driver employing a paper RODS takes an average of 6.5 minutes to complete it; a driver employing an EOBR takes an average of 2 minutes to complete it. A driver takes an average of 5 minutes to forward a paper RODS to the motor carrier; a driver employing an EOBR is relieved of this task by automation. Whether using a paper or EOBR RODS, a motor carrier takes 2 minutes to review a RODS and its corresponding supporting documents, and 1 additional minute to maintain those supporting documents. For those motor carriers using an EOBR, the ICR burden of maintaining the RODS is eliminated by automation; for those motor carriers using paper RODS, 1 minute is required to maintain the RODS.

Expiration Date: 8/31/2011.

Estimated Frequency of Response

Drivers: 240 days per year, on average.

Motor Carriers: 240 days per year, on average.

Estimated Annual Responses: 3,843.59 million—the sum of the following:

A. Driver Tasks

(1) Filling out the RODS: 1,104 million, and

(2) Forwarding the RODS to the motor carrier: 102.23 million.

B. Motor Carrier Tasks

(1) Reviewing the RODS: 552 million,

(2) Maintaining the RODS: 981.36 million, and

(3) Maintaining the supporting documents: 1,104 million.

Estimated Total Annual Burden: 172.08 million burden hours [118.92 million driver hours + 53.16 million carrier hours].

Background: The FMCSA regulates the amount of time a CMV driver may drive or otherwise be on duty, in order to ensure that an adequate period of time is available to the driver to rest. A driver must accurately record his or her duty status (driving, on duty not driving, off duty, sleeper berth) at all points during the 24-hour period designated by the motor carrier (49 CFR 395.8(a)(1)). This RODS must be made on a grid specified by subsection 395.8(g). The term ''logbook'' is often used in the industry to denote the collection of the most recent RODS of the driver. A driver must have the RODS for the previous 7 consecutive days in the CMV at all times (395.8(k)(2)). The RODS must be submitted to the motor carrier along with any supporting documents, such as fuel receipts and toll tickets that could assist in verifying the accuracy of entries on the RODS, and the motor carrier must retain these records for a minimum of 6 months from the date of receipt (49 CFR 395.8(k)(1)).

Statutory authority for regulating the hours of service (HOS) of drivers operating CMVs in interstate commerce is derived from 49 U.S.C. 31136 and 31502. The penalty provisions are located at 49 U.S.C. 521, 522 and 526, as amended. On November 28, 1982, the Federal Highway Administration (FHWA), the agency responsible for administration of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 350 *et seq.*) at that time, promulgated a final rule requiring motor carriers to ensure that their drivers record their duty status in a specified format and verify the accuracy of the HOS of each driver (47 FR 53383). The rule is codified at 49 CFR 395.8.

The HOS rules provide the following four methods of recording driver duty status:

(1) *Paper RODS*: This grid form requires the driver to graph time and location on a paper record over a 24-hour period (Section 395.8(g)). It must be present on the CMV in the absence of a regulatory exception.

(2) *Time Record:* The HOS regulations allow certain ''short haul'' CMV drivers to avoid the onboard-the-CMV RODS requirement if their employing motor carrier records their HOS by means of a time record or time card maintained at the place of business (Section 395.1(e)). To qualify for this exception, short-haul drivers generally must return at the end of the duty day to the same location at which they began the day, and must remain within a certain distance of that location at all times during the duty day. The time record must show the time the driver began work, was released from work, and the total hours worked.

(3) *Automatic On-Board Recording Device (AOBRD)*: An electronic record is permitted if it is created and maintained by an AOBRD as defined by 49 CFR 395.2. The record must include all the information that would appear on a paper RODS, and the driver or carrier must be capable of producing this information upon demand.

(4) *EOBR*: Motor carriers subject to an FMCSA remedial directive must use an electronic record created and maintained by an EOBR as defined in 49 CFR 395.2. Other motor carriers may voluntarily employ EOBRs.

The RODS is important because it provides motor carriers and enforcement personnel a significant tool

for determining driver compliance with the HOS rules. Compliance helps FMCSA protect the public by reducing the number of tired CMV drivers on the highways.

Most States receive grants from FMCSA under the Motor Carrier Safety Assistance Program. As a condition of receiving these grants, States agree to adopt and enforce the FMCSRs, including the HOS rules, as State law. As a result, State enforcement inspectors use the RODS and supporting documents to determine whether CMV drivers are complying with the HOS rules. In addition, FMCSA uses the RODS during on-site compliance reviews (CRs) and targeted reviews of motor carriers. The CR is a public record. An unfavorable review can be damaging to a motor carrier's business because customers may access the CRs before selecting a motor carrier to hire. Finally, Federal and State judicial systems generally accept RODS as evidence in actions alleging driver or motor carrier violations of the HOS regulations. This information collection supports the DOT's Strategic Goal of Safety because the information helps the Agency ensure the safe operation of CMVs in interstate commerce on our Nation's highways.

The currently-approved PRA burden estimate is 181.28 million hours, as approved by OMB on August 20, 2010. The expiration date of this IC is August 31, 2011. In this ICR, FMCSA proposes to reduce the PRA burden by approximately 9.20 million burden hours, or by slightly over 5 percent. FMCSA seeks OMB approval of its revised estimated PRA burden of 172.08 million burden hours. In today's submission, FMCSA for the first time estimates the extent of *voluntary* EOBR use by motor carriers, and subtracts that same number from its estimate of the extent of the use of paper RODS. The Agency maintains its OMB-approved estimates of the total number of CMV drivers subject to the HOS rules, and the total number of CMV drivers subject to an Agency remedial HOS directive.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the information collected.

Issued on: August 8, 2011.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2011–20584 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Notice of Fiscal Year 2012 Safety Grants and Solicitation for Applications

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; change in application due dates.

SUMMARY: This notice informs the public of FMCSA's Fiscal Year (FY) 2012 safety grant opportunities and FMCSA's projected application due dates. FMCSA announces these grant opportunities based on authorities provided for in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users. The Agency will inform applicants if new authorizing legislation changes its grant programs for FY 2012 through a **Federal Register** notice. The 10 safety grant programs include the Motor Carrier Safety Assistance Program (MCSAP) Basic grants; MCSAP Incentive grants; New Entrant Safety Audit grants; MCSAP High Priority grants; Commercial Motor Vehicle (CMV) Operator Safety Training grants; Border Enforcement grants (BEG); Commercial Driver's License Program Improvement (CDLPI) grants; Performance and Registration Information Systems Management (PRISM) grants; Safety Data Improvement Program (SaDIP) grants; and the Commercial Vehicle Information Systems and Networks (CVISN) grants. It should be noted that FMCSA does not expect the Commercial Driver's License Information System (CDLIS) Modernization grants to be continued in reauthorization, and, therefore, FMCSA will not be soliciting applications for this grant program in FY 2012.

FOR FURTHER INFORMATION CONTACT: Please contact the following FMCSA staff with questions or needed information on the Agency's grant programs:

MCSAP Basic/Incentive Grants—Suzanne Poole, *suzanne.poole@dot.gov,* 202–493–0804.

New Entrant Safety Audits Grants—Arthur Williams, *arthur.williams@dot.gov,* 202–366–3695.

Border Enforcement Grants—Carla Vagnini, *carla.vagnini@dot.gov,* 202–366–3771.

High Priority Grants—Cim Weiss, *cim.weiss@dot.gov,* 202–366–0275.

CMV Operator Safety Training Grants—Arthur Williams, *arthur.williams@dot.gov,* 202–366–0710.

CDLPI Grants—James Ross, *james.ross@dot.gov,* 202–366–0133.

SaDIP Grants—Cim Weiss, *cim.weiss@dot.gov,* 202–366–0275.

PRISM Grants—Julie Otto, *julie.otto@dot.gov,* 202–366–0710.

CVISN Grants—Julie Otto, *julie.otto@dot.gov,* 202–366–0710.

All staff may be reached at FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., E.S.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Purpose

FMCSA recognizes that State and local governments and other grantees are dependent on the Agency's safety grants to develop and maintain important CMV safety programs. FMCSA further acknowledges that delays in awarding grant funds may have an adverse impact on these important safety programs. As a result, FMCSA completed a grants process review to identify ways to streamline the application, award, and grants management processes, and to award grant funds earlier each fiscal year. In addition, FMCSA made changes in the grants application, award and oversight processes to standardize application forms, increase the use of electronic documents, standardize quarterly reports, and reduce the number of needed grant amendments.

FMCSA continues to enter into grant agreements beginning October 1 or as soon thereafter as administratively practicable. FMCSA intends to begin awarding grants no later than 90 days from the date the application is due.

FMCSA uses the standard grant application form and quarterly reporting process. FMCSA requires the Standard Form 424 (Application for Federal Assistance) and its attachments for all grant program applications. While each grant program may request different data in some of the data fields on the form, the use of the Standard Form 424 is mandatory. FMCSA uses the Standard Form-Project Progress Report (SF–PPR) as its required form for quarterly reporting. While each grant program may request that different data be submitted in some fields or boxes on the

form, the use of the SF–PPR is mandatory.

FMCSA uses the Standard Form-425 Federal Financial Report as its required form for quarterly financial reporting; use of this form is mandatory. Because FMCSA has implemented a new grants management information technology system, GrantSolutions, the Agency will provide all grant agreement documents electronically to its financial processing office. GrantSolutions is a comprehensive grants management system provided by the Grants Center of Excellence (COE). The Grants COE serves as one of three consortia leads under the Grants Management Line of Business E–Gov initiative offering government-wide grants management system support services. GrantSolutions provides standardized grant application, award, and management and oversight throughout the Agency's grant programs. Electronic signature of grant documents in GrantSolutions is the Agency's preferred method for executing grant agreements. FMCSA will provide more information on how to electronically sign documents to grantees after award decisions have been made. Grantees will, however, be required to submit the completed Automated Clearing House (ACH) Vendor Payment Form (SF–3881) directly to FMCSA's financial processing office by U.S. Postal Service, courier service, or secure fax. Additional information is provided below for each individual grant program.

MCSAP Basic and Incentive Grants

Sections 4101 and 4106 of SAFETEA–LU authorize FMCSA's Motor Carrier Safety Grants. MCSAP Basic and Incentive formula grants are governed by 49 U.S.C. 31102–31104 and 49 CFR part 350. Under the Basic and Incentive grants programs, a State lead MCSAP agency, as designated by its Governor, is eligible to apply for Basic and Incentive grant funding by submitting a commercial vehicle safety plan (CVSP). See 49 CFR 350.201 and 350.205. Pursuant to 49 U.S.C. 31103 and 49 CFR 350.303, FMCSA will reimburse each lead State MCSAP agency 80 percent of eligible costs incurred in a fiscal year. Each State will provide a 20 percent match to qualify for the program. The FMCSA Administrator waives the requirement for matching funds for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. See 49 CFR 350.305. In accordance with 49 CFR 350.323, the Basic grant funds will be distributed proportionally to each State's lead MCSAP agency using the following four, equally weighted (25 percent) factors:

(1) 1997 road miles (all highways) as defined by the FMCSA;

(2) All vehicle miles traveled (VMT) as defined by the FMCSA;

(3) Population—annual census estimates as issued by the U.S. Census Bureau; and

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FMCSA.

A State's lead MCSAP agency may qualify for Incentive funds pursuant to 49 CFR 350.207(a) if it can demonstrate that the State's CMV safety program has shown improvement in any or all of the following five categories:

(1) Reduction in the number of large truck-involved fatal crashes;

(2) Reduction in the rate of large-truck-involved fatal crashes or maintenance of a large-truck-involved fatal crash rate that is among the lowest 10 percent of such rates for MCSAP recipients and is not higher than the rate most recently achieved;

(3) Upload of CMV crash reports in accordance with current FMCSA policy guidelines;

(4) Verification of Commercial Driver's Licenses during all roadside inspections; and

(5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

Incentive funds will be distributed in accordance with 49 CFR 350.327(b). Prior to the start of each fiscal year, FMCSA calculates the amount of Basic and Incentive funding each State is expected to receive. This information is provided to the States and is made available on the Agency's Web site. The projected FY 2012 distribution is available at *http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/mcsapforms.htm*. It should be noted that MCSAP Basic and Incentive formula grants are awarded based on the State's submission of the CVSP. The evaluation factors described in the section below titled ''Application Information for FY 2012 Grants'' will not be considered. MCSAP Basic and Incentive grant applications must be submitted electronically through *grants.gov* (*http://www.grants.gov*).

New Entrant Safety Audit Grants

Sections 4101 and 4107 of SAFETEA–LU also authorize the Motor Carrier Safety Grants to enable grant recipients to conduct interstate New Entrant safety audits consistent with 49 CFR parts 350.321 and 385.301. Eligible recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. The goal of the New Entrant Safety Assurance Program is to reduce CMV involved crashes, fatalities, and injuries through consistent, uniform, and effective safety programs. New Entrant grant funds will be awarded, at the discretion of the FMCSA to States to conduct safety audits on new interstate motor carriers. States may use these funds for salaries and related expenses of New Entrant auditors, including training and equipment, and to perform other eligible activities that are directly related to conducting safety audits. The FMCSA's share of these grant funds will be 100 percent pursuant to 49 U.S.C. 31144. New Entrant grant applications must be submitted electronically through grants.gov.

MCSAP High Priority Grants

Section 4107 of SAFETEA–LU also authorizes the Motor Carrier Safety Grants to enable recipients to carry out activities and projects that improve CMV safety and compliance with CMV regulations. Funding is available for projects that are national in scope, increase public awareness and education, demonstrate new technologies and reduce the number and rate of CMV crashes. Eligible recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. For grants awarded for public education activities, the Federal share will be 100 percent. For all other High Priority grants, FMCSA will provide reimbursements for no more than 80 percent of all eligible costs, and recipients will be required to provide a 20 percent match. Examples of High Priority activities include innovative traffic enforcement projects, with particular emphasis on work zone enforcement, rural road safety, and innovative traffic enforcement initiatives such as Ticketing Aggressive Cars and Trucks (TACT). TACT provides a research-based safety model that can be replicated by States when conducting a high-visibility traffic enforcement program to promote safe driving behaviors among car and truck drivers. The objective of this program is to reduce the number of commercial truck and bus related crashes, fatalities and injuries resulting from improper operation of motor vehicles and aggressive driving behavior. More information regarding TACT can be found at *http://www.fmcsa.dot.gov/*

safety-security/tact/abouttact.htm. High Priority grant applications must be submitted through grants.gov.

CMV Operator Safety Training Grants

Section 4134 of SAFETEA–LU established a grant program which enables recipients to train current and future drivers in the safe operation of CMVs, as defined in 49 U.S.C. 31301(4). Eligible awardees include State governments, local governments and accredited post-secondary educational institutions (public or private) such as colleges, universities, vocational-technical schools and truck driver training schools. Funding priority for this discretionary grant program will be given to regional or multi-state educational or nonprofit associations serving economically distressed regions of the United States. The Federal share of these funds will be 80 percent, and recipients will be required to provide a 20 percent match. CMV Operator Safety Training grant applications must be submitted electronically through grants.gov.

Border Enforcement Grants (BEG)

Section 4110 of SAFETEA–LU established the BEG program. The purpose of this discretionary program is to provide funding for border CMV safety programs and related enforcement activities and projects. Pursuant to 49 U.S.C. 31107, eligible awardees include State governments that share a land border with Canada or Mexico, and any local government, or entities (*i.e.,* accredited post-secondary public or private educational institutions such as universities) in that State. FMCSA encourages local agencies to coordinate their application with the State lead CMV inspection agency. Applications must include a Border Enforcement Plan and meet the required maintenance of expenditure requirement. BEG funding decisions take into consideration the State or entity's performance on previous BEG awards; the applicant's ability to expend the awarded funds with the BEG performance year; and activities meeting the BEG national criteria established by FMCSA. As established by SAFETEA–LU, the Federal share of these funds will be 100 percent. BEG grant applications must be submitted electronically through grants.gov.

CDLPI Grants

Section 4124 of SAFETEA–LU established a discretionary grant program that provides funding for improving States' implementation of the Commercial Driver's License (CDL) program, including expenses for computer hardware and software, publications, testing, personnel, and training. Pursuant to 49 U.S.C. 31313, funds may not be used to rent, lease, or buy land or buildings. The agency designated by each State as having the primary driver licensing responsibility, including development, implementation, and maintenance of the CDL program, is eligible to apply for basic grant funding. State agencies, local governments, and other entities that can support a State's effort to improve its CDL program or conduct projects on a national scale to improve the national CDL program may also apply for projects under the High Priority and Emerging Issues components. Grant proposals must include a detailed budget explaining how the funds will be used. The Federal share of funds for projects awarded under this grant is established by SAFETEA–LU as 100 percent. The funding opportunity announcement on grants.gov will provide more detailed information on the application process; national funding priorities for FY 2012; evaluation criteria; required documents and certifications; State maintenance of expenditure requirements; and additional information related to the availability of funds. CLDPI grant applications must be submitted electronically through grants.gov.

SaDIP Grants

Section 4128 of SAFETEA–LU established the Safety Data Improvement Program grant opportunity to support State programs by improving the overall quality of CMV data and specifically to improve the timeliness, efficiency, accuracy and completeness of State processes and systems used to collect, analyze and report large truck and bus crash and inspection data, as described 49 U.S.C. 31102. Eligible recipients are State agencies, including the Territories of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the U.S. Virgin Islands, and the District of Columbia. SaDIP applications must address the FMCSA State Safety Data Quality (SSDQ) map, which provides a color-coded, pictorial representation of the State's overall performance against the SSDQ methodology. This methodology was developed by FMCSA to evaluate the completeness, timeliness, accuracy, and consistency of the State-reported CMV crash and inspection records in the Motor Carrier Management Information System (MCMIS). The SSDQ methodology is comprised of nine measures and one Overriding Indicator. Ratings are updated quarterly, and individual State performance is portrayed through the color-coded rating system: Green (good performance), Yellow (fair performance), and Red (poor performance). The color-coded rating system depicts each State's Overall Rating which considers all nine SSDQ measures, except those measures with a rating of ''Insufficient Data,'' plus the Overriding Indicator. Priority will be given to proposals received from States rated Yellow and Red on the SSDQ Map. The FMCSA will provide reimbursements for no more than 80 percent of all eligible costs; recipients are required to provide a 20 percent match. SaDIP grant applications must be submitted electronically through grants.gov.

PRISM Grants

Section 4109 of SAFETEA–LU authorizes FMCSA to award financial assistance funds to States to implement the PRISM requirements that link Federal motor carrier safety information systems with State CMV registration and licensing systems. This program enables a State to determine the safety fitness of a motor carrier, a registrant, or both when licensing or registering and while the license or registration is in effect. No matching funds are required. PRISM grant applications must be submitted electronically through grants.gov.

CVISN Grants

Section 4126 of SAFETEA–LU authorizes FMCSA to award financial assistance to States to deploy, operate, and maintain elements of their CVISN Program, including commercial vehicle, commercial driver, and carrier-specific information systems and networks. The agency in each State designated as responsible for the development, implementation, and maintenance of a CVISN-related system is eligible to apply for grant funding. Section 4126 of SAFETEA–LU distinguishes between two types of CVISN projects: Core and Expanded. To be eligible for funding of Core CVISN deployment project(s), a State must have its most current Core CVISN Program Plan and Top-Level Design approved by FMCSA and the proposed project(s) should be consistent with its approved Core CVISN Program Plan and Top-Level Design. If a State does not have a Core CVISN Program Plan and Top-Level Design, it may apply for up to $100,000 in funds to either compile or update a Core CVISN Program Plan and Top-Level Design. A State may also apply for funds to prepare an Expanded CVISN Program Plan and Top-Level Design if FMCSA acknowledged the State as having completed Core CVISN deployment. In

order to be eligible for funding of any Expanded CVISN deployment project(s), a State must have its most current Expanded CVISN Program Plan and Top-Level Design approved by FMCSA and any proposed Expanded CVISN project(s) should be consistent with its Expanded CVISN Program Plan and Top-Level Design. If a State does not have an existing or up-to-date Expanded CVISN Program Plan and Top-Level Design, it may apply for up to $100,000 in funds to either compile or update an Expanded CVISN Program Plan and Top-Level Design. CVISN grant applications must be submitted electronically through grants.gov. Awards for approved CVISN grant applications are made to all Core CVISN applicants first and then to Expanded CVISN applicants. States must provide a match of 50 percent.

Application Information for FY 2012 Grants

General information about the FMCSA grant programs is available in the Catalog of Federal Domestic Assistance (CFDA) which can be found on the Internet at *http://www.cfda.gov*. To apply for funding, applicants must register with grants.gov at *http://www.grants.gov/applicants/get_registered.jsp* and submit an application in accordance with instructions provided.

Evaluation Factors: The following evaluation factors will be used in reviewing the applications for all FMCSA discretionary grants:

(1) Prior performance—Completion of identified programs and goals per the project plan.

(2) Effective Use of Prior Grants—Demonstrated timely use and expensing of available funds.

(3) Cost Effectiveness—Applications will be evaluated and prioritized on the basis of expected impact on safety relative to the investment of grant funds. Where appropriate, costs per unit will be calculated and compared with national averages to determine effectiveness. In other areas, proposed costs will be compared with historical information to confirm reasonableness.

(4) Applicability to announced priorities—If national priorities are included in the grants.gov notice, those grants that specifically address these issues will be given priority consideration.

(5) Ability of the applicant to support the strategies and activities in the proposal for the entire project period of performance.

(6) Use of innovative approaches in executing a project plan to address identified safety issues.

(7) Feasibility of overall program coordination and implementation based upon the project plan.

(8) Any grant-specific evaluation factors, such as program balance or geographic diversity, will be included in the grants.gov application information.

Estimated Application Due Dates: For the following grant programs, FMCSA will consider funding complete applications or plans submitted by the following anticipated dates (final due dates will be indicated in the grants.gov funding opportunity notice):

MCSAP Basic and Incentive Grants—August 1, 2011.
Border Enforcement Grants—September 12, 2011.
MCSAP High Priority Grants—October 17, 2011.
New Entrant Safety Audit Grants—October 17, 2011.
SaDIP Grants—October 31, 2011.
CDLPI Grants—November 14, 2011.
CMV Operator Safety Training Grants—December 5, 2011.
CVISN Grants—December 5, 2011.
PRISM Grants—December 12, 2012.

Applications submitted after due dates may be considered on a case-by-case basis and are subject to availability of funds.

Issued on: August 8, 2011.

Anna J. Amos,

Director, Office of Safety Programs.

[FR Doc. 2011–20557 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0140]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 17 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective August 12, 2011. The exemptions expire on August 12, 2013.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On June 24, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 37169). That notice listed 17 applicants' case histories. The 17 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the

17 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 17 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including complete loss of vision, prosthesis retinal vein occlusion, retinal scaring, retinal coloboma, amblyopia, histoplasmosis, cataract, corneal transplantation, corneal scaring and Eales' disease. In most cases, their eye conditions were not recently developed. Ten of the applicants were either born with their vision impairments or have had them since childhood. The 7 individuals who sustained their vision conditions as adults have had them for periods ranging from 2 to 36 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 17 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 45 years. In the past 3 years, one of the drivers was involved in a crash and one of the drivers was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 24, 2011 notice (76 FR 37169).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 17 applicants, one of the applicants was involved in a crash and one of the applicants was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to

traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 17 applicants listed in the notice of June 24, 2011 (76 FR 37169).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 17 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts, Danny F. Burnley, Bruce A. Cameron, Charles E. Carter, Ronald J. Claud, Stewart K. Clayton, Sean R. Conorman, Jackie R. Frederick; Robert E. Graves, Brian P. Millard, Steven D. Nash, Merle M. Price, Terrence F. Ryan, Kirby R. Sands, Dennis W. Stubrich, Stephen W. Verrette, Joseph A. Wells and Leslie H. Wylie from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 5, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–20600 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2011–0001–N–10]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 11, 2011.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0008.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6479, or via e-mail to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kimberly.Toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 21, Washington, DC 20590 (*telephone:* (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection request (ICR) that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

OMB Control Number: 2130–0008.

Abstract: Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law No. 102–365, amended Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 *et seq.*), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA issued revisions to the regulations governing freight power brakes and equipment in October 2008 by adding a new Subpart addressing electronically controlled pneumatic (ECP) brake systems. The revisions are designed to provide for and encourage the safe implementation and use of ECT brake system technologies. These revisions contain specific requirements relating to design, interoperability, training, inspection, testing, handling defective equipment and periodic maintenance related to ECP brake systems. The final rule also identifies provisions of the existing regulations and statutes where FRA is proposing to provide flexibility to facilitate the voluntary adoption of this advanced brake system technology. The collection of information is used by FRA to monitor and enforce current regulatory requirements related to power brakes on freight cars as well as the recently added requirements related to ECP brake systems. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 559 railroads.

Frequency of Submission: On occasion.

Affected Public: Businesses.

Reporting Burden

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.27: Annual Tests	30,000 Locomotives	30,000 tests	15 minutes	7,500
232.3: Applicability—Cars Not Used in Service	559 Railroads	8 cards	10 minutes	1
232.7: Waivers	559 railroads	20 petitions	40 hours	800
232.11: Penalties	559 railroads	1 false record	10 minutes	.17
232.15: Movement of Defective Equipment—Notice of Defective Car/Locomotive and Restrictions.	1,620,000 cars/locos	128,400 tags	2.5 minutes	5,350
	1,620,000 cars/locos	25,000 notices	3 minutes	1,250
232.17:				
Special Approval Procedure	559 railroads	4 petitions	100 hours	400
Petitions—Pre-Revenue Svc Plans	559 railroads	2 petitions	100 hours	200
Copies of Petitions—Special Approval	559 railroads	4 petitions	40 hours	160
Statements of Interest	Public/Railroads	14 statements	8 hours	112
Comments on Special Approval Procedure Petition.	Public/Railroads	13 comments	4 hours	52
232.103: General Requirements for All Train Brakes.	114,000 cars	70,000 stickers	10 minutes	11,667
232.105: General Requirements For Locomotives.	30,000 locomotives	30,000 forms	5 minutes	2,500
232.107:				
Air Source Requirements—Plans	10 new railroads	1 plan	40 hours	40
Amendments to Plan	50 Existing Plans	10 amendment	20 hours	200
Record Keeping	50 Existing Plans	1,150 records	20 hours	23,000
232.109:				
Dynamic Br. Requirements—Rcd	559 railroads	1,656,000 rcd	4 minutes	110,400
Repair of Inoperative Dynamic Brakes	30,000 locomotives	6,358 records	4 minutes	424
Locomotives w/Inoperative Dynamic Br.	30,000 locomotives	6,358 tags	30 seconds	53
Deactivated Dynamic Brakes: Markings	8,000 locomotives	10 markings	5 minutes	1
Rule Safe Train Handling Procedures	5 new railroads	5 oper. rules	4 hours	20
Amendments	559 railroads	15 amendment	1 hour	15
Over Speed Top Rules—5 MPH Increase	559 railroads	5 requests	20.5 hours	103
Locomotive Engineer Certification Programs—Dynamic Brakes Training.	5 new railroads	5 amendments	16 hours	80
232.111:				
Train Information Handling	5 new railroads	5 procedures	40 hours	200
Amendments	100 railroads	100 am. proc.	20 hours	2,000
Reports to Train Crews	559 railroads	2,112,000 rpts	10 minutes	352,000
232.203:				
Training Requirements: Training Programs—Subsequent Years.	15 railroads	5 programs	100 hours	500
Amendments to Written Program	559 railroads	559 am. prog.	8 hours	4,472

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Training Records	559 railroads	67,000 records	8 minutes	8,933
Training Notifications	559 railroads	67,000 notices	3 minutes	3,350
Validation/Assessment Plans	559 railroads	1 plan +559 copies	40 hrs./1 min.	49
Amendments to Validation/Assessment Plans.	559 railroads	50 amendment	20 hours	1,000
232.205: Class I Brake Test—Initial Terminal Insp.	559 railroads	1,646,000 notices	45 seconds	20,575
232.207:				
Class I A Brake Tests: 1000 Mile Insp.	559 railroads	25 designations	30 minutes	13
Subsequent Years	559 railroads	1 designation	1 hour	1
Amendments	559 railroads	5 amendments	1 hour	5
232.209: Class II Brake Tests—Intermediate Insp.	559 railroads	1,600,000 comments	3 seconds	1,333
232.213:				
Extended Haul Trains—Designations	84,000 train movements.	100 designations	15 minutes	25
Records	84,000 train movements.	25,200 records	20 minutes	8,400
232.303:				
General Requirements—Track Brake Test	1,600,000 freight cars	5,600 tags	5 minutes	467
Location of Last Track Brake Test/Single Car Test.	1,600,000 freight cars	320,000 stenciling	5 minutes	26,667
232.305: Single Car Tests	1,600,000 freight cars	320,000 tests/rcds	45 minutes	240,000
232.309: Equipment and Devices—Tests/Calibrations.	640 shops	5,000 tests	30 minutes	2,500
232.403: Design Standards For One-way EOT Devices—Unique Code.	245 railroads	12 requests	5 minutes	1
232.407: Operations Requiring 2-Way EOTs	245 railroads	50,000 commun	30 seconds	417
232.409:				
Inspection and Testing of 2–Way EOTs	245 railroads	450,000 commun	30 seconds	3,750
Testing Telemetry Equipment	245 railroads	32,708 markings	60 seconds	545
232.503:				
Process to Introduce New Brake System Technology—Special Approval.	559 railroads	1 request/letter	60 minutes	1
Pre-Revenue Service Demonstration	559 railroads	1 request	3 hours	3
232.505:				
Pre-Revenue Service Acceptance Testing Plan: Maintenance Procedure—1st Year.	559 railroads	1 procedure	160 hours	160
Subsequent Years	559 railroads	1 amendment	40 hours	40
Amendments	559 railroads	1 petition	67 hours	67
Design Descriptions—Petitions	559 railroads	1 report	13 hours	13
Results Pre-Revenue Service Acceptance Testing.	559 railroads	5 descriptions	40 hours	200
Description of Brake Systems Technologies Previously Used in Revenue Service.				
232.603:				
ECP Requirements Brakes—Configuration Management Plans.	4 railroads	1 plan	160 hours	160
Updated Plans in Subsequent Years	4 railroads	1 plan	160 hours	160
Modification of Standards—Requests	4 railroads	1 request + 4 copies	8 hours + 5 minutes	8
RR Statement Affirming Copy of Modification Request to Employee Reps.	4 railroads	4 statements + 24 copies.	60 minutes + 5 minutes	6
Comments on Modification Request	Public/Interested Parties.	4 comments	2 hours	8
232.605:				
ECP Training Programs	4 railroads	4 programs	100 hours	400
Programs in Subsequent Years	4 railroads	2 programs	100 hours	200
ECP Trained Employees	4 railroads	6,409 empl.	8 hrs./24 hrs.	10,512
ECP Trained Employees—Subsequent Yr	4 railroads	6,409 empl.	1 hr./8 hrs.	30,264
ECP Trained Employees—Records	4 railroads	6,409 records	4 minutes	855
ECP Trained Employees—Sub. Records	4 railroads	6,409 records	4 minutes	428
RR/Contractor Assessment of ECP Training Programs—Amended Plans.	4 railroads	4 amended plans	40 hours	160
232.607:				
ECP Trains Inspection/Testing	4 railroads	10,000 tests + 10,000 notices.	90 minutes + 45 seconds.	15,125
Notification to Locomotive Engineer:				
Cars Added en Route—Tests/Notifications	4 railroads	1,000 tests + 1,000 notices.	60 minutes + 45 seconds.	1,006
Non-ECP Cars Added—Inspections and Tagging of Defective Equipment.	2000 Cars	200 insp. + 400 tags	5 minutes + 2.5 minutes.	34
232.609:				

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Handling of Defective Equipment w/ECP Brake Systems—Tagging.	25 Cars	50 tags	2.5 minutes	2
Train in ECP Mode w/Less Than 85% of Cars w/Operative Brakes—Insp. + Tagging.	20 Cars	20 insp. + 40 tags	5 minutes + 2.5 minutes.	3
Freight Cars w/ECP Systems Found with Defective Non-Safety Appliance—Tagging.	75 Cars	150 tags	2.5 minutes	6
Conventional Train Operating with ECP Stand Alone Brake Systems—Tagging.	500 Cars	1,000 tags	2.5 minutes	42
Procedures for Handling ECP Brake System Repairs.	4 railroads	4 procedures	24 hours	96
Submission to FRA of ECP Brake System Repair Locations—Lists.	4 railroads	4 lists	8 hours	32
Notice to FRA of Change in List	4 railroads	1 notification	60 minutes	1
232.611:				
Periodic Maintenance Inspection and Repair of ECP Cars Before Release from Repair Shop or Track.	500 freight Cars	500 inspection and records.	10 minutes	83
Petitions for Special Approval of Pre-Revenue Service Acceptance Testing Plan.	AAR	1 petition + 2 copies	24 hours + 5 minutes	24
Single Car Brake Test on ECP Retrofitted Cars.	2,500 freight Cars	2,500 tests/Records	45 minutes	1,875
Modification of Single Car Test Standard	AAR	1 procedure	40 hours	40

Total Responses: 8,677,078.

Total Estimated Total Annual Burden: 990,276 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on August 5, 2011 .

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–20464 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability of a Draft Environmental Impact Report/ Environmental Impact Statement for the California High-Speed Train Project Fresno to Bakersfield Section

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA is issuing this notice to advise the public that a Draft Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) has been prepared for the California High-Speed Train (HST) Project Fresno to Bakersfield Section (Project). FRA is the lead Federal agency and the California High-Speed Rail Authority (Authority) is the lead state agency for the environmental review process.

The Authority plans to construct and operate a fully grade-separated, dedicated double-track, electric powered, passenger rail, high-speed railroad along a 114-mile corridor between Fresno and Bakersfield, CA. The Project includes stations in downtown Fresno and Bakersfield, and a possible Kings/Tulare Regional Station east of Hanford, CA. A heavy maintenance facility for assembly, testing, and commissioning of trains, train inspection and service, and train overhaul may be constructed in the Fresno to Bakersfield Section.

The Draft EIR/EIS presents the Project's purpose and need, identifies all reasonable alternatives including track alignments, stations, and heavy maintenance facilities as well as the no action alternative, describes the affected environment, analyzes the potential environmental impacts of all the reasonable alternatives and the no action alternative, and identifies appropriate mitigation measures to minimize the potential environmental impacts.

DATES: Written comments on the Draft EIR/EIS for the Fresno to Bakersfield Section should be provided to the Authority on or before September 28, 2011. Public hearings are scheduled on September 20, September 21, and September 22, 2011 in Fresno, CA, Hanford, CA, and Bakersfield, CA respectively at the times and dates listed in the **ADDRESSES** section below.

ADDRESSES: Written comments on the Draft EIR/EIS should be sent to the California High-Speed Rail Authority, Fresno to Bakersfield EIR/EIS Comments, 770 L Street, Suite 800, Sacramento, CA 95814, through the Authority's Web site at *http://www.cahighspeedrail.ca.gov,* or via e-mail with the subject line ''Draft EIR/EIS'' at *Fresno_Bakersfield@hsr.ca.gov.* Comments may also be provided orally or in writing at the public hearings scheduled at the following locations:

- *Fresno, CA,* Tuesday, September 20, 2011, 3 p.m. to 8 p.m., Fresno Convention Center, 848 M Street, Fresno, CA;
- *Hanford, CA,* Wednesday, September 21, 2011, 3 p.m. to 8 p.m., Civic Auditorium, 400 N. Douty Street, Hanford, CA; and
- *Bakersfield, CA,* Thursday, September 22, 2011, 3 p.m. to 8 p.m., Beale Memorial Library, 701 Truxton Avenue, Bakersfield, CA.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Chief, Environment and Systems Planning Division, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 (telephone: 202–493–6368), or Mr. Dan Leavitt, Deputy Director for Environmental Review and Planning, California High-Speed Rail Authority, 770 L Street, Ste. 800, Sacramento, CA 95814 (telephone: 916–324–1541).

SUPPLEMENTARY INFORMATION:

Once completed, the California HST system will provide intercity, high-speed passenger rail service on more than 800 miles of tracks throughout California, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. It will use state-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology, including contemporary safety, signaling, and automated train-control systems, with trains capable of operating up to 220 miles per hour (mph) over a fully grade-separated, dedicated double track alignment.

The FRA and Authority certified a Statewide Program EIR/EIS (Tier 1) for the California HST system in November 2005 as the first phase of a tiered environmental review process for the California HST system. In 2008, the FRA and Authority certified another program EIR/EIS for the Bay Area to Central Valley portion of the HST system. The Fresno to Bakersfield Section Draft EIR/EIS (Tier 2) analyzes the environmental impacts and benefits of implementing the high-speed train in the more geographically limited area between Fresno and Bakersfield, and is based on more detailed project planning and engineering. This Draft EIR/EIS analysis builds on the earlier decisions and program EIR/EISs, and provides more site-specific and detailed analysis.

The Authority plans to complete the California HST System in two phases. Phase 1 will connect San Francisco to Los Angeles/Anaheim via the Pacheco Pass and the Central Valley with a mandated express travel time of 2 hours and 40 minutes or less. Phase 2 will connect the Central Valley to the state's capital, Sacramento, and will extend the system from Los Angeles, CA to San Diego, CA. This Project is for one section in Phase 1 and is receiving funding from FRA for design and environmental review as well as for the construction of an initial Section in the Central Valley.

The American Recovery and Reinvestment Act of 2009 (Recovery Act), enacted February 17, 2009, contained $8 billion to fund high-speed intercity passenger rail (HSIPR) projects. In response to the Recovery Act funding, FRA developed and began implementation of the HSIPR Program to fund projects to improve existing intercity passenger rail service and to develop new high speed intercity passenger rail corridors. FRA's HSIPR Program also received an additional $2.1 billion from the Transportation, Housing, and Urban Development and Related Agencies Appropriations Act of 2010. The California High-Speed Rail Authority applied for and was selected to receive over $3.5 billion in HSIPR funds from FRA to complete preliminary engineering and NEPA reviews and associated documentation for all eight segments comprising the California HST System and to construct an initial Central Valley Section from Madera County to Bakersfield (Kern County) California. Completion of the environmental review process marked by issuance of a Record of Decision (ROD) by FRA is a prerequisite for any construction related Federal funding or approvals from FRA.

The approximately 114-mile-long Fresno to Bakersfield Section is a critical Phase 1 link connecting Merced to Fresno and Bay Area HST Sections to the north and the Bakersfield to Palmdale and Palmdale to Los Angeles HST Sections to the south. The Fresno to Bakersfield Section includes HST stations in the cities of Fresno and Bakersfield, with a third potential station located in the vicinity of Hanford (Kings/Tulare Regional Station) that would serve the Hanford, Visalia, and Tulare area. The Fresno and Bakersfield stations are this Section's beginning and ending points, or project termini.

This Draft EIR/EIS has been prepared by the FRA and the Authority consistent with the provisions of Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Counsel of Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 *et seq.*), FRA's Procedures for Considering Environmental Impacts (64 FR 28545 (May 26, 1999)), the California Environmental Quality Act (CEQA) (Public Resources Code § 21000–21178), and CEQA Guidelines (California Code of Regulations Title 14, Chapter 3 § 15000–15387).

Copies of the Draft EIR/EIS are available online at FRA's Web site: *http://www.fra.dot.gov;* the Authority's Web site: *http://www.cahighspeedrail.ca.gov;* and they are also available for viewing at the following locations near the planned rail system:

- *Fresno County Public Library, Central Branch,* Central Reference Department, 2420 Mariposa Street, Fresno, CA;
- *Fresno County Public Library, Clovis Regional Library,* 1155 Fifth Street, Clovis, CA;
- *Fresno County Public Library, Laton Branch,* 6313 DeWoody Street, Laton, CA;
- *Kern County Library, Beale Memorial Library,* 701 Truxtun Avenue, Bakersfield, CA;
- *Kern County Library, Corcoran Branch,* 1001 Chittenden Avenue, Corcoran, CA;
- *Kern County Library, Delano Branch,* 925 10th Avenue, Delano, CA;
- *Kern County Library, Shafter Branch,* 236 James Street, Shafter, CA;
- *Kern County Library, Wasco Branch,* 1102 7th Street, Wasco, CA;
- *Kings County Library, Hanford Branch (Main Library),* 401 N. Douty Street, Hanford, CA;
- *Kings County Library, Lemoore Branch,* 457 C Street, Lemoore, CA;
- *Tulare County Library, Visalia Branch (Main Library),* 200 West Oak Avenue, Visalia, CA; and
- *Tulare Public Library,* 475 North M Street, Tulare, CA.

Issued in Washington, DC on August 9, 2011.

Corey W. Hill,

Director, Rail Project Development and Delivery.

[FR Doc. 2011–20571 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability of a Draft Environmental Impact Report/ Environmental Impact Statement for the California High-Speed Rail Project Merced to Fresno Section

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA is issuing this notice to advise the public that a Draft Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) has been prepared for the California High-Speed Train (HST) Project Merced to Fresno Section (Project). FRA is the lead Federal agency and the California High-Speed Rail Authority (Authority) is the lead state agency for the environmental review process.

The Authority proposes to construct and operate a reliable high-speed electric-powered passenger train system along an approximately 65-mile corridor, from Merced, CA, to Fresno, CA that links those cities by delivering predictable and consistent travel times. The Project includes high-speed track alignments, stations in downtown Merced and Fresno. A heavy maintenance facility for assembly, testing, and commissioning of trains,

train inspection and service, and train overhaul may be constructed in the Merced to Fresno Section.

The Draft EIR/EIS presents the Project's purpose and need, identifies all reasonable alternatives including track alignments, stations, and heavy maintenance facilities as well as the no action alternative, describes the affected environment, analyzes the potential environmental impacts of all the reasonable alternatives and the no action alternative, and identifies appropriate mitigation measures to minimize the potential environmental impacts.

DATES: Written comments on the Draft EIR/EIS for the Project should be provided to the Authority on or before September 28, 2011. Public hearings are scheduled on September 14, 2011, September 15, 2011, and September 20, 2011 in Merced, CA, Madera, CA, and Fresno, CA respectively at the times and dates listed in the Addresses Section below.

ADDRESSES: Written comments on the Draft EIR/EIS should be sent to the California High-Speed Rail Authority, Merced to Fresno EIR/EIS Comment, 770 L Street, Suite 800, Sacramento, CA 95814, through the Authority's Web site at *http://www.cahighspeedrail.ca.gov,* or via e-mail with the subject line ''Draft EIR/EIS'' to *merced_fresno@hsr.ca.gov.* Comments may also be provided orally or in writing at the public hearings scheduled at the following locations:

- Merced, CA, Wednesday, September 14, 2011, 3 to 8 p.m., Merced Community Senior Center, 755 West 15th Street, Merced, CA 95340;
- Madera, CA, Thursday, September 15, 2011, 3 to 8 p.m., Madera City Council Chambers, 205 W. 4th Street, Madera, CA 93637; and
- Fresno, CA, Tuesday, September 20, 2011, 3 to 8 p.m., Fresno Convention Center, 848 M Street, Fresno, CA.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Chief, Environment and Systems Planning Division, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 (telephone: 202–493–6368), or Mr. Dan Leavitt, Deputy Director for Environmental Review and Planning, California High-Speed Rail Authority, 770 L Street, Ste. 800, Sacramento, CA 95814 (telephone: 916–324–1541).

SUPPLEMENTARY INFORMATION: Once completed, the California HST system will provide intercity, high-speed passenger rail service on more than 800 miles of tracks throughout California, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. It will use state-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology, including contemporary safety, signaling, and automated train-control systems, with trains capable of operating up to 220 miles per hour (mph) over a fully grade-separated, dedicated double track alignment.

The FRA and Authority certified a Statewide Program EIR/EIS (Tier 1) for the California HST system in November 2005 as the first phase of a tiered environmental review process for the California HST system. In 2008, the FRA and Authority certified another program EIR/EIS for the Bay Area to Central Valley portion of the HST system. The Merced to Fresno Section Draft EIR/EIS (Tier 2) analyzes the environmental impacts and benefits of implementing the high-speed train in the more geographically limited area between Merced and Fresno, and is based on more detailed project planning and engineering. This Draft EIR/EIS analysis builds on the earlier decisions and program EIR/EISs, and provides more site-specific and detailed analysis.

The Authority plans to complete the California HST System in two phases. Phase 1 will connect San Francisco to Los Angeles/Anaheim via the Pacheco Pass and the Central Valley with a mandated express travel time of 2 hours and 40 minutes or less. Phase 2 will connect the Central Valley to the state's capital, Sacramento, and will extend the system from Los Angeles to San Diego. This Project is for one section in Phase 1 and is receiving funding from FRA for design and environmental review as well as for the construction of an initial Section in the Central Valley.

The American Recovery and Reinvestment Act of 2009 (Recovery Act), enacted February 17, 2009, contained $8 billion to fund high-speed and intercity passenger rail (HSIPR) projects. In response to the Recovery Act funding, FRA developed and began implementation of the HSIPR Program to fund project to improve existing intercity passenger rail service and to develop new high speed intercity passenger rail corridors. FRA's HSIPR Program also received an additional $2.1 billion from the Transportation, Housing, and Urban Development and Related Agencies Appropriations Act of 2010. The California High-Speed Rail Authority applied for and was selected to receive over $3.5 billion in HSIPR funds from FRA to complete preliminary engineering and NEPA reviews, and associated documentation for all eight segments comprising the California HST System and to construct an initial Central Valley Section from Madera County to Bakersfield (Kern County) California. Completion of the environmental review process marked by issuance of a Record of Decision (ROD) by FRA is a prerequisite for any construction related Federal funding or approvals from FRA.

The approximately 65-mile-long Merced to Fresno Section is an essential part of the statewide HST System. The Merced to Fresno Section is the location of the connection between the Bay Area and Sacramento branches of the HST System; it will provide Merced and Fresno access to a new transportation mode and will contribute to increased mobility throughout California. This Section will connect the central San Joaquin Valley region to the remainder of the HST System via Merced County, Madera County, and the northern part of the city of Fresno.

This Draft EIR/EIS has been prepared by the FRA and the Authority consistent with the provisions of Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Counsel of Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 *et seq.*), FRA's Procedures for Considering Environmental Impacts (64 FR 28545 (May 26, 1999)), and in conformity with the California Environmental Quality Act (CEQA) (California Public Resources Code Section 21000 *et. seq.*), and the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et. seq.*).

Copies of the Draft EIR/EIS are available online at FRA's Web site: *http://www.fra.dot.gov* and the Authority's Web site: *http://www.cahighspeedrail.ca.gov;* they are also available for viewing at the following locations near the planned rail system:

- Fresno County Public Library, Central Branch, 2420 Mariposa Street, Fresno, CA 93721;
- Madera County Library, 121 North G Street, Madera, CA 93637;
- Chowchilla Branch Library (Madera County Library), 300 Kings Avenue, Chowchilla, CA 93610;
- Merced Community Senior Center, 755 West 15th Street, Merced, CA 95340;
- Merced County Library, 2100 O Street, Merced, CA 95340;
- Galilee Missionary Baptist Church, 22941 Fairmead Boulevard, Chowchilla, CA 93610;

• Le Grand Branch Libarary, 12949 Le Grand Road, Le Grand, CA 95333;
• Lao Family Community, 855 W. 15th Street, Merced, CA 95333;
• Madera Ranchos Branch Library, 37167 Avenue 12, Suite 4C, Madera, CA 95636;
• Merced County Los Banos Branch Library, 1312 South Seventh Street, Los Banos, CA 93635; and
• Atwater Branch Library, 1600 Third Street, Atwater, CA 95301.

Issued in Washington, DC, on August 9, 2011.

Corey W. Hill,

Director, Rail Project Development and Delivery.

[FR Doc. 2011–20582 Filed 8–11–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35541]

Tyburn Railroad, LLC—Acquisition and Operation Exemption—Tyburn Railroad Company

Tyburn Railroad, LLC (Tyburn), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Tyburn Railroad Company and operate approximately 0.9 miles of rail lines in Morrisville, Pa.

According to Tyburn, there are no mileposts associated with the lines, which are located at ''1535 S. Pennsylvania Avenue'' in Morrisville. The lines were formerly a yard owned by Consolidated Rail Corporation (Conrail) and are located in a Conrail Shared Asset Area. Tyburn states that it will be able to interchange traffic with Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSXT), and Tyburn will enter into standard agreements with Conrail, NS, and CSXT to effect such interchange.

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35542, *Regional Rail—Continuance in Control Exemption—Tyburn Railroad,* wherein Regional Rail, LLC seeks Board approval to continue in control of Tyburn, upon Tyburn's becoming a Class III rail carrier.

The transaction may not be consummated until August 28, 2011 (30 days after the notice of exemption was filed).

Tyburn certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier and will not exceed $5 million.

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. Petitions to stay must be filed no later than August 19, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35541, 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 Karl Morell, Suite 225, 655 15th St., NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 5, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–20556 Filed 8–11–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35542]

Regional Rail, LLC—Continuance in Control Exemption—Tyburn Railroad, LLC

Regional Rail, LLC (Regional), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Tyburn Railroad, LLC (Tyburn), upon Tyburn's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35541, *Tyburn Railroad—Acquisition and Operation Exemption—Tyburn Railroad,* wherein Tyburn seeks Board approval to acquire from Tyburn Railroad Company and operate approximately 0.9 miles of rail lines in Morrisville, Pa.

The parties intend to consummate the transaction on or shortly after the effective date of the verified notice of exemption.

Regional is a Delaware limited liability company that currently controls 2 Class III railroads, East Penn Railroad, LLC (ESPN) and Middletown and New Jersey Railroad, LLC (Middletown). ESPN operates rail lines in Pennsylvania and Delaware, and Middletown operates rail lines in New York. Regional also owns 100 percent of the issued and outstanding shares of Tyburn.

Regional represents that: (1) The rail lines to be operated by Tyburn do not connect with any other railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the rail lines with any other railroads in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under § 11324 and § 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

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 August 19, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35542, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Suite 225, 655 15th St., NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 5, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–20553 Filed 8–11–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35543]

Arkansas Shortline Railroads, Inc.—Continuance in Control Exemption—North Louisiana & Arkansas Railroad, Inc.

Arkansas Shortline Railroads, Inc. (ASR), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of North Louisiana & Arkansas Railroad, Inc. (NLA) upon NLA's becoming a Class III rail carrier.

In *Delta Southern Railroad—Abandonment Exemption—in Desha and Chicot Counties, Ark.,* AB 384 (Sub-No. 3X) (STB served Mar. 25, 2011), Delta Southern Railroad, Inc. (DSR) was authorized to abandon a 24.1-mile line of railroad (the Line) extending between milepost 408.9 at or near McGehee and milepost 433.0 at or near Lake Village, in Desha and Chicot Counties, Ark., subject to environmental and standard employee protective conditions.

Lake Providence Port Commission and ASR as guarantor for its wholly owned subsidiary, NLA, a newly formed noncarrier (collectively, Offerors), jointly filed a timely offer of financial assistance (OFA) under the provisions of 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the entire Line. By a decision served on April 8, 2011, the Board found the Offerors to be financially responsible. By a decision served on May 19, 2011, the Offerors were authorized to acquire the Line, and NLA was authorized to operate the Line.

ASR currently controls 3 Class III rail carriers: Dardanelle & Russellville Railroad, Inc., Ouachita Railroad, and Camden & Southern Railroad, Inc.

The parties propose to consummate the transaction after the August 26, 2011 effective date of the exemption (30 days after the exemption was filed).

ASR represents that: (1) The rail line to be operated by NLA will not connect with any other lines in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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 August 19, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35543, 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 Richard H. Streeter, Law Office of Richard H. Streeter, 5255 Partridge Lane, NW., Washington, DC 20016.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 5, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–20505 Filed 8–11–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 8, 2011.

The Department of Treasury will submit the following public information collection requirement(s) 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(s) 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 Department Clearance Officer, Department of the Treasury, Room 11010, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 12, 2011 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0043.

Type of Review: Extension without change of a currently approved collection.

Title: Correspondent Accounts for Foreign Shell Banks; Record keeping and Termination of Correspondent Accounts.

Abstract: These rules prohibit domestic financial institutions from maintaining correspondent accounts with foreign shell banks and require such institutions to maintain records of the owners, and agents, for service of legal process of foreign banks.

Affected Public: Private Sector: Businesses or other for-profits, not-for-profit institutions.

Estimated Total Burden Hours: 306,000.

OMB Number: 1506–0051.

Type of Review: Extension without change of a currently approved collection.

Title: Special rules for casinos (31 CFR 1021.210, 1021.410(b)(10), and 1010.430.

Abstract: This section provides special rules for casinos, including the requirement that casinos maintain a written anti money laundering compliance program.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 92,500.

OMB Number: 1506–0052.

Type of Review: Extension without change of a currently approved collection.

Title: Additional records to be made and retained by currency dealers or exchangers (31 CFR 1022.410 & 1010.430.

Abstract: A currency dealer or exchanger must make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended, and must maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information. A currency dealer or exchanger must retain the original or a copy of certain documents, as specified in section 1022.410. The required records must be maintained for five years (31 CFR 1010.430).

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 36,800.

OMB Number: 1506–0053.

Type of Review: Extension without change of a currently approved collection.

Title: Additional records to be made and retained by brokers or dealers in securities (31 CFR 1023.410 & 1010.430).

Abstract: A broker or dealer in securities must retain an original or copy of certain documents, as specified in section 1023.410. The required records must be maintained for five years (31 CFR 1010.430).

Affected Public: Private Sector: Businesses or other for-profits, not-for-profit institutions.

Estimated Total Burden Hours: 830,000.

OMB Number: 1506–0054.

Type of Review: Extension without change of a currently approved collection.

Title: Additional records to be made and retained by casinos (31 CFR 1021.410 & 1010.430).

Abstract: Casinos (and card clubs) must make and retain a record of the name, permanent address, and taxpayer identification number each person who deposits funds with the casino, opens an account at the casino, or to whom the casino extends a line of credit (and maintain a list, available to the Secretary upon request, of the names and addresses of persons who do not furnish a taxpayer identification number), and must retain the original or a copy of certain documents, as specified in section 1021.410(a)&(b)(1)–(8)). Casinos must also maintain a list of transactions with customers involving certain instruments (31 CFR 1021.410(b)(9)). Card clubs must maintain records of currency transactions by customers and records of activity at cages (31 CFR 1021.410(b)(11)). Casinos that input, store, or retain required records on computer disk, tape or other machine-readable media must maintain the records on such media (31 CFR 1021.410(c)). Required records must be maintained for five years (31 CFR 1010.430).

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 121,056.

OMB Number: 1506–0055.

Type of Review: Extension without change of a currently approved collection.

Title: Reports of transactions with foreign financial agencies (31 CFR 1010.360).

Abstract: Treasury may, by regulation, require specified financial institutions to report transactions by persons with designated foreign financial agencies.

Affected Public: Private Sector: Businesses or other for-profits, not-for-profit institutions.

Estimated Total Burden Hour: 1.

OMB Number: 1506–0056.

Type of Review: Extension without change of a currently approved collection.

Title: Reports of certain domestic coin and currency transactions (31 CFR 1010.370 & 1010.410(d)).

Abstract: Upon a finding that additional reporting or recordkeeping is necessary to carry out the purposes, or prevent the evasion, of the Bank Secrecy Act, Treasury may issue an order requiring financial institutions or groups of financial institutions in certain geographic locations to report certain transactions in prescribed amounts for a limited period of time (31 CFR 1010.360). Financial institutions subject to a geographic targeting order must maintain records for such period of time as the order requires but not more than 5 years (31 CFR 1010.410(d)). Although the burden is stated as an annual burden in accordance with the Paperwork Reduction Act, the estimated annual burden is not intended to indicate that there is a geographic targeting order in effect throughout a year or in each year.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 6,800.

OMB Number: 1506–0057.

Type of Review: Extension without change of a currently approved collection.

Title: Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks (31 CFR 1010.415 & 31 CFR 1010.430).

Abstract: Financial institutions must maintain records of certain information related to the sale of bank checks and drafts, cashier's checks, money orders, or traveler's checks when the sale involves currency between $3,000 and $10,000. The records must be maintained for a period of five years and be made available to Treasury upon request.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 456,750.

OMB Number: 1506–0058.

Type of Review: Extension without change of a currently approved collection.

Title: Records to be made and retained by financial institutions (31 CFR 1010.410 and 1010.430).

Abstract: Each financial institution must retain an original or copy of records related to extensions of credit in excess of $10,000 (other than those secured by real property), and records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than $10,000 to or from the United States (31 CFR 1010.410(a)–(d)). Banks and non-bank financial institutions must also maintain records related to, and include certain information as part of, funds transfers or transmittals of funds involving more than $3,000 (31 CFR 1010.410(e)–(f)–(g). The required records must be maintained for five years (31 CFR 1010.430).

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,139,000.

OMB Number: 1506–0059.

Type of Review: Extension without change of a currently approved collection.

Title: Additional records to be made and retained by banks (31 CFR 1020.410 and 1010.430).

Abstract: A bank must retain an original or copy of certain documents, as specified in section 1020.410. The required records must be maintained for five years (31 CFR 1010.430).

Affected Public: Private Sector: Businesses or other for-profits, not-for-profit institutions.

Estimated Total Burden Hours: 2,290,000.

Bureau Clearance Officer: Russell Stephenson, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183; (202) 354–6012.

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. 2011–20478 Filed 8–11–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b), the United States Mint is accepting applications for membership to the Citizens Coinage Advisory Committee (CCAC) for a new member specially qualified to serve on the CCAC by virtue of his or her education, training, or experience in *numismatic curation.* The CCAC was established to:

- Advise 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 produced by the United States Mint.

• Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends 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.

• Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of 11 voting members appointed by the Secretary of the Treasury:

• One person specially qualified by virtue of his or her education, training or experience as nationally or internationally recognized curator in the United States of a numismatic collection;

• One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;

• One person specially qualified by virtue of his or her education, training, or experience in American history;

• One person specially qualified by virtue of his or her education, training, or experience in numismatics;

• Three persons who can represent the interests of the general public in the coinage of the United States; and

• Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the U.S. House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately six to eight times per year. The United States Mint is responsible for providing the necessary support, technical services and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is also interested in candidates who have demonstrated leadership skills, have received recognition by their peers in their field of interest, have a record of participation in public service or activities, and are willing to commit the time and effort to participate in the CCAC meetings and related activities.

Application Deadline: September 15, 2011.

Receipt of Applications: Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing qualifications for membership, by fax to 202–756–6830, or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, *Attn:* Andrew Fishburn. Submissions must specify which position the candidate wishes to be considered for, and must be postmarked no later than September 15, 2011.

Notice Concerning Delivery of First-Class and Priority Mail

The delivery of first-class mail to the United States Mint has been delayed since mid-October 2001, and delays are expected to continue. Until normal mail service resumes, please consider using alternate delivery services when sending time-sensitive material.

Some or all of the first-class and priority mail we receive may be put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services.

FOR FURTHER INFORMATION CONTACT: Andrew Fishburn, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–6700.

Dated: August 4, 2011.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–20474 Filed 8–11–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b), the United States Mint is accepting applications for membership to the Citizens Coinage Advisory Committee (CCAC) for a new member representing the *interests of the general public* in the coinage of the United States. The CCAC was established to:

• Advise 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 produced by the United States Mint.

• Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends 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.

• Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of 11 voting members appointed by the Secretary of the Treasury:

• One person specially qualified by virtue of his or her education, training or experience as nationally or internationally recognized curator in the United States of a numismatic collection;

• One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;

• One person specially qualified by virtue of his or her education, training, or experience in American history;

• One person specially qualified by virtue of his or her education, training, or experience in numismatics;

• Three persons who can represent the interests of the general public in the coinage of the United States; and

• Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the U.S. House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately six to eight times per year. The United States Mint is responsible for providing the necessary support, technical services and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its

recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is also interested in candidates who have demonstrated leadership skills, have received recognition by their peers in their field of interest, have a record of participation in public service or activities, and are willing to commit the time and effort to participate in the CCAC meetings and related activities.

Application Deadline: September 15, 2011.

Receipt of Applications: Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing qualifications for membership, by fax to 202–756–6830, or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, *Attn:* Andrew Fishburn. Submissions must specify which position the candidate wishes to be considered for, and must be postmarked no later than September 15, 2011.

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The delivery of first-class mail to the United States Mint has been delayed since mid-October 2001, and delays are expected to continue. Until normal mail service resumes, please consider using alternate delivery services when sending time-sensitive material.

Some or all of the first-class and priority mail we receive may be put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services.

FOR FURTHER INFORMATION CONTACT: Andrew Fishburn, United States Mint Liaison to the CCAC; 801 Ninth Street, NW.; Washington, DC 20220; or call 202–354–6700.

Dated: August 4, 2011.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–20471 Filed 8–11–11; 8:45 am]

BILLING CODE 4810–02–P

FEDERAL REGISTER

Vol. 76 Friday,
No. 156 August 12, 2011

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, *et al.*
Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, and 178

[Docket No. PHMSA–2009–0063 (HM–250)]

RIN 2137–AE38

Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA, in coordination with the Nuclear Regulatory Commission (NRC), is proposing to amend requirements in the Hazardous Materials Regulations (HMR) governing the transportation of Class 7 (radioactive) materials based on recent changes contained in the International Atomic Energy Agency (IAEA) publication ''Regulations for the Safe Transport of Radioactive Material, 2009 Edition, IAEA Safety Standards Series No. TS–R–1'' (hereafter referred to as TS–R–1). The purposes of this rulemaking are to harmonize requirements of the HMR with international standards for the transportation of Class 7 (radioactive) materials and update, clarify, correct, or provide relief from certain regulatory requirements applicable to the transportation of Class 7 (radioactive) materials.

DATES: Comments must be received by November 10, 2011.

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

U.S. Government Regulations.gov Web site: http://www.regulations.gov. Use the search tools to find this rulemaking and follow the instructions for submitting comments.

U.S. Mail or private delivery service: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590–0001.

Fax: 1–202–493–2251.

Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number, PHMSA–2009–0063 (HM–250) or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to the U.S. Government Regulations.gov Web site: *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act section of this document.

FOR FURTHER INFORMATION CONTACT: Kurt Eichenlaub, Standards and Rulemaking Division, telephone (202) 366–8553, or Michael Conroy, Engineering and Research Division, telephone (202) 366–4545, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Contents

I. Background

Under their respective statutory authorities, PHMSA and the NRC jointly regulate the transportation of radioactive materials to, from, and within the United States. In accordance with their July 2, 1979, Memorandum of Understanding (a copy of which has been placed in the docket of this rulemaking) (44 FR 38690):

1. PHMSA regulates both shippers and carriers with respect to:

A. Packaging requirements;

B. Communication requirements for:

- Shipping paper contents,
- Package labeling and marking requirements, and
- Vehicle placarding requirements;

C. Training and emergency response requirements; and

D. Highway routing requirements.

2. NRC requires its licensees to satisfy requirements to protect public health and safety and to assure the common defense and security, and:

A. Certifies Type B and fissile material package designs and approves package quality assurance programs for its licensees;

B. Provides technical support to PHMSA and works with PHMSA to ensure consistency with respect to the transportation of Class 7 (radioactive) materials; and

C. Conducts inspections of licensees and an enforcement program within its jurisdiction to assure compliance with its requirements.''

Since 1968, PHMSA and the NRC (and their predecessor agencies) have, to the extent practicable, harmonized their respective regulations with international regulations of the IAEA in:

- Safety Series No. 6, Regulations for the Safe Transport of Radioactive Material, as published in 1961 and revised in 1964 and 1967. Amendents to the HMR were adopted in a final rule published on October 4, 1968 in Docket HM–2 (33 FR 14918).
- The major updates of Safety Series No. 6 in 1973 and 1985. See the final rules published on March 10, 1983 in Docket HM–169 (48 FR 10218) and September 28, 1995, in Docket HM–169A (60 FR 50291).
- The 1996 major revision to the Safety Series No. 6, renamed ''Regulations for the Safe Transport of Radioactive Material, 1996 Edition, No. ST–1'' issued by the IAEA in 1996 and republished in 2000 to include minor editorial changes at which time the previous designation was changed to ''Regulations for the Safe Transport of Radioactive Material, 1996 Edition, No. TS–R–1, (ST–1, Revised).'' See the final rule published on January 26, 2004, in Docket HM–230 (69 FR 3632).

Since then, the IAEA has published amendments and revised editions of TS–R–1 in 2003, 2005, and 2009.

In this notice, PHMSA is proposing to amend the HMR to maintain alignment with the 2009 Edition of TS–R–1 which incorporates all of the changes made to TS–R–1 in the 2003 amendments, the 2005 Edition, as well as other revisions. (In this notice, PHMSA uses the nomenclature ''TS–R–1'' to refer to the 2009 Edition of TS–R–1, a copy of which may be obtained from the U.S. distributors, Bernan, 15200 NBN Way, P.O. Box 191, Blue Ridge Summit, PA 17214, telephone 800–865–3457, e-mail: *customercare@bernan.com*, or Renouf Publishing Company Ltd., 812 Proctor Ave., Ogdensburg, NY 13669, telephone: 1–888–551–7470, e-mail: *orders@renoufbooks.com.* An electronic copy of TS–R–1 has been placed in the docket of this rulemaking and may also

be found at the following IAEA Web site:

http://www-pub.iaea.org/MTCD/publications/PDF/Pub1384_web.pdf.

In addition to changes to harmonize with TS–R–1, PHMSA is proposing regulatory amendments identified through internal regulatory review processes to update, clarify, correct, or provide relief from certain regulatory requirements applicable to the transportation of Class 7 (radioactive) materials.

As in PHMSA's past rulemakings to incorporate updates of the IAEA regulations into the HMR, PHMSA is working in close cooperation with the NRC in the development of this rulemaking. PHMSA anticipates that NRC will publish a parallel rulemaking at a future date. Since the proposed rules will be published separately, there is a risk of differences in overlapping proposals that may affect the compatibility of NRC and PHMSA regulations. PHMSA and NRC will coordinate the development and publication schedules for the final rules, and if necessary, may issue a supplemental notice of proposed rulemaking to ensure that the proposed rules are compatible. This NPRM addresses only the areas for which DOT has jurisdiction as defined in the MOU with NRC. Comments on non-DOT issues or on DOT issues not within the scope of this rulemaking will not be addressed by DOT as part of this rulemaking. Comments responding to the NRC's parallel NPRM, which is expected be published in the **Federal Register** at a future date, should be submitted in accordance with the public participation guidelines established by NRC.

II. Overview of Proposed Changes in This NPRM

This NPRM proposes changes to the HMR based on changes incorporated in the 2009 Edition of the IAEA Safety Standards publication titled ''Regulations for the Safe Transport of Radioactive Material, 2009 Edition, Safety Requirements, No. TS–R–1.'' One of the goals of this rulemaking is to continue to maintain compatibility between the HMR and the IAEA regulations. PHMSA is not striving to make the HMR identical to the IAEA regulations but rather to remove or avoid potential barriers to international commerce while adhering to domestic law, reflecting domestic practices, and maintaining public health and safety. Accordingly, PHMSA is not proposing to adopt all of the amendments to TS–R–1 since 2000 into the HMR. In many cases, amendments to the IAEA standards are not being proposed for adoption because the framework or structure of the HMR makes adoption unnecessary or impractical.

If PHMSA inadvertently has omitted an amendment in this NPRM, the omission may be included in the final rule to the extent permitted: (1) If it is clearly within the scope of changes proposed in the notice, (2) does not require substantive changes from the IAEA standards on which it is based, and (3) imposes minimal or no cost impacts on persons subject to the requirement. Otherwise, in order to provide opportunity for notice and comment, the change must be proposed in the NPRM or in a supplemental notice of proposed rulemaking.

Proposed amendments to the HMR in this notice include, but are not limited to, those listed below in Sections II.A (in harmony with TS–R–1) and II.B (additional changes), and a detailed rationale for each proposed amendment is discussed in Part III, Section-By-Section review. In Section II.C, we list those significant amendments to the IAEA regulations since 2000 that we are not proposing to adopt.

A. Changes for Harmonization With the 2009 Edition of TS–R–1

In this NPRM, based on the 2009 TS–R–1 changes, PHMSA is proposing to amend the HMR as follows:

- Revise paragraph § 173.25(a)(4) to adopt the new TS–R–1 requirement for the marking of all overpacks of Class 7 (radioactive) packages with the word ''OVERPACK.''
- Modify the scoping statement in § 173.401(b)(4), which excludes natural materials and ores containing naturally occurring radionuclides from the HMR, to add the phrase ''which are either in their natural state, or which have only been processed for purposes other than for extraction of the radionuclides.''
- Add a scoping statement to § 173.401 to clarify that non-radioactive solid objects with radioactive substances on their surfaces in quantities not exceeding the levels cited in the definition of contamination are not subject to subpart I of part 173.
- In § 173.403, define the criticality safety index (CSI) for each conveyance to be the sum of the CSIs of all the packages in that conveyance.
- Modify the wording for category (ii) of LSA–I in § 173.403 to be consistent with the wording in TS–R–1.
- Adopt the slight change in definition of ''natural uranium'' in § 173.403 from ''chemically separated uranium'' to ''uranium (which may be chemically separated).''
- Revise § 173.410(i)(3) to require that packages containing liquid radioactive material to be transported by air be capable of withstanding, without leakage, an internal pressure which produces a pressure differential of not less than maximum normal operating pressure plus 95 kPa.
- Revise the nomenclature in § 173.411 on Industrial Packagings to refer to Type IP–1, –2, and –3 packages instead of IP–1, –2, and –3 packagings.
- Revise §§ 173.411 and 173.412 to specify that the testing of Types IP–2, IP–3 and Type A packages shall not result in ''more than a 20% increase in the maximum radiation level at any external surface of the package.''
- Revise § 173.411(b)(4) to refer to ''portable tanks'' rather than to ''tank containers'' and revise § 173.411(b)(5) for ''cargo tanks and tank cars'' and include the TS–R–1 requirements for such tanks.
- Revise § 173.412(f) to specify that the containment system of a Type A package be capable of retaining its contents under the reduction of ambient pressure to 60 kPa (8.7 psi).
- Revise § 173.412(k) to clarify the requirements for enclosure of liquid contents in inner components of Type A packages, including complete retention within the secondary outer containment.
- Revise § 173.420 to require the use of the uranium hexafluoride proper shipping names and UN numbers for shipments of 0.1 kg or more of non-fissile, fissile-excepted, or fissile uranium hexafluoride (UF_6), even if other proper shipping names and UN numbers are feasible.
- Revise § 173.433(c) to authorize the use of an A_2 value for a radionuclide not in the table in 173.435 by using a dose coefficient for the appropriate lung absorption type.
- Revise Tables 7 (General Values for A_1 and A_2) and 8 (General Exemption Values) in § 173.433, to clarify how neutron emitters are to be handled. Also, because the IAEA A_1 default value for alpha emitters is larger than that for beta or gamma emitters, we have added a footnote to ensure that the lower value is required when both alpha and beta or gamma emitters are known to be present.
- In the Table of A_1 and A_2 values for radionuclides in § 173.435, adopt the new IAEA A_1 value for Cf-252 and eliminate the domestic alternative for the A_2 value.
- In the Table of A_1 and A_2 values for radionuclides in § 173.435, adopt the new IAEA A_1 and A_2 values for Kr-79.
- Modify footnote (a) to the table in § 173.435 to refer the reader to the

corresponding footnote (a) to Table 2 in TS–R–1. The 2009 TS–R–1 includes as footnote (a) to Table 2 an extensive list of radionuclides of half-life 10 days or less which were included in A_1/A_2 values for their parent radionuclides.

• In § 173.436, revise the activity limit for an exempt consignment of Te-121m (Tellurium-121m) from 1×10^5 Bq to 1×10^6 Bq.

• In § 173.436, add exempt activity concentration and exempt consignment activity limits for Kr-79.

• Remove the decay chains for Ce-134, Rn-220, Th-226, and U-240 in footnote (b) to the table in § 173.436 and add the decay chain for Ag-108m.

• Specify in § 173.443 that, under certain conditions, the radioactive material package contamination limits apply not only to overpacks, freight containers, tanks, and intermediate bulk containers, but also to conveyances transporting radioactive materials.

• In § 173.443(a)(1), revise to apply to only unpackaged radioactive material, and not apply to overpacks, an exception from the requirement that the package contamination limits be satisfied for the internal surfaces of freight containers, tanks, intermediate bulk containers, and conveyances carrying radioactive material so long as they are in transport under certain exclusive use provisions.

• Revise § 173.465(d)(i) to clarify that the stacking test should use five times the maximum weight of the loaded package, including the maximum weight of the contents that the packaging manufacturer is certifying for the package.

• Revise § 173.469 to authorize the use of ISO 2919 Class 5 impact test as an acceptable alternative to the IAEA 30 foot drop and percussion tests for special form sources weighing less than 500 g.

B. Other Proposed Amendments

In addition to the amendments proposed for harmonization with TS–R–1, PHMSA is also proposing to:

• Revise the shipping paper description requirements in § 172.203 and the labeling requirements in § 172.403 to clarify that the activity shown should be the total maximum activity of all the radioactive contents during transport.

• Revise the marking requirements in § 172.310(b) for Type A packages to eliminate an inconsistency with § 178.350.

• Revise Table 1 in § 172.504 to additionally require conveyances carrying fissile material packages, unpackaged LSA–I material or SCO–I, all conveyances required by §§ 173.427 and 173.441 to operate under exclusive use conditions, and all closed vehicles used in accordance with § 173.443(d) to be placarded.

• Revise § 173.4 to require that excepted packages of radioactive material that also contain small quantities of other hazardous materials are not exempted from the Class 7 related requirements that would be applied if they did not contain small quantities of other hazardous materials, such as the applicable UN number marking.

• Revise the definition of ''fissile material'' to clarify that certain exceptions are provided in § 173.453.

• Modify § 173.411(c) to extend the retention period for Type IP–2 and Type IP–3 package documentation from one year to two years after the offerror's latest shipment, to coincide with the minimum retention period for shipping papers.

• Modify § 173.415(a) to extend the retention period for Type A package documentation from one year to two years after the offerror's latest shipment, to coincide with the minimum retention period currently required for shipping papers.

• Modify § 173.415(a) to include more detailed language describing the kinds of information to be included as part of the Type A package documentation.

• Delete paragraph (c) of § 173.416 which allowed the continued use of an existing Type B packaging constructed to DOT specification 6M, 20WC, or 21WC until October 1, 2008.

• Add a new paragraph in § 173.416 to reference the U.S. Nuclear Regulatory Commission 10 CFR 71.41 provision for special package authorizations by the NRC for domestic shipments of Type B quantities when compliance with all provisions of the regulations is impracticable, but an equivalent level of safety in transport is maintained through alternative means.

• Delete references to DOT Specification 21PF–1A, 21PF–1B, or 21PF–2 overpacks in paragraph § 173.417(a)(3), as these overpacks are no longer in service.

• Delete references to DOT Specification 21PF–1A or 21PF–1B overpacks in paragraph § 173.417(b)(3), as these overpacks are no longer in service.

• Delete paragraph (c) of § 173.417 which allowed the continued use of an existing fissile material packaging constructed to DOT specification 6L, 6M, or 1A2 until October 1, 2008.

Add a new paragraph in § 173.417 to reference the U.S. Nuclear Regulatory Commission 10 CFR 71.41 provision for special package authorizations by the NRC for domestic shipments of fissile materials packages when compliance with all provisions of the regulations is impracticable, but an equivalent level of safety in transport is maintained through alternative means.

• Modify § 173.420 to remove paragraph (a)(2)(ii), which references specifications for DOT–106A multi-unit tank car tanks.

• Modify § 173.421 to remove paragraph (b) which permits an excepted package of limited quantity radioactive material that is also a hazardous substance or hazardous waste to be shipped without complying with § 172.203(d) or § 172.204(c)(4); and, modify § 173.422 to permit an excepted package of radioactive material that is also a hazardous substance or hazardous waste to be shipped without having to comply with § 172.202(a)(6), § 172.203(d) or § 172.204(c)(4) and require that packages containing hazardous substances be marked with the letters ''RQ.''

• Modify § 173.427(a)(6)(v), to remove the placarding exception for shipments of unconcentrated uranium or thorium ores and clarify that all of the placarding requirements of subpart F of part 172 must be met.

• Modify § 173.427(a)(6)(vi) to require that shipments of low specific activity (LSA) materials or surface contaminated objects (SCO) that contain a subsidiary hazard from another hazard class be labeled for the subsidiary hazard.

• Require in § 173.443(c) that any conveyance, overpack, freight container, tank, or intermediate bulk container involved in an exclusive use shipment under § 173.427(b)(4), § 173.427(c), or § 173.443(b) be surveyed with appropriate radiation detection instrumentation after each such shipment, and not be permitted to be used for another such shipment until the removable surface contamination meets package contamination limits and the radiation dose rate at each accessible surface is no greater than 0.005 mSv/h (0.5 mrem/h). This essentially restricts the use of the phrase ''returned to service'' to refer only to continued exclusive use service under one of three specific transport scenarios.

• Revise § 173.453 to insert a phrase that would allow a fissile material exception for uranium enriched in uranium-235 to a maximum of 1 percent by weight under the conditions stated there only if the material in question is essentially homogeneous.

• Revise § 173.473 to update the reference to the IAEA regulations to the most currently incorporated by reference version rather than the out-dated Safety Series No. 6.

• Revise § 173.476 to extend the retention period for special form documentation from one year to two years after the offerror's latest shipment, to coincide with the minimum retention period for shipping papers.

• Revise § 173.477 to extend the retention period for uranium hexafluoride packaging documentation from one year to two years after the offerror's latest shipment, to coincide with the minimum retention period for shipping papers.

• Delete paragraph (e) of § 174.700, which provides special handling requirements for fissile material, controlled shipments.

• Replace § 175.702(b) and (c) with a new § 175.702(b) containing an introductory phrase to indicate that the limitations on combined (total) criticality safety indexes found in § 175.700(b) also apply.

• Delete § 178.358 ''Specification 21PF fire and shock resistant, phenolic-foam insulated, metal overpack'' and § 178.358–1 through § 178.358–6 as these overpacks are no longer in service.

C. Amendments to TS–R–1 Not Being Considered for Adoption in This NPRM

Below is a listing of significant amendments to the IAEA regulations made since PHMSA's last harmonization rulemaking that are not being proposed for adoption in this notice with an explanation of why each provision was not proposed.

• The new TS–R–1 paragraph 109 pertaining to security. The security training requirements in § 172.704 and the security plan requirements in Part 172 Subpart I already sufficiently address this topic.

• The revised TS–R–1 definition for fissile material, which makes a distinction between ''fissile nuclides'' and ''fissile material,'' because this change would also have to be adopted by the NRC.

• The TS–R–1 consignor, carrier, and consignee notification requirements in cases of non-compliance with the regulations. The HMR currently contain reporting requirements for consignors and carriers in the event of ''fire, breakage, spillage, or suspected radioactive contamination'' in §§ 171.15 and 171.16, and the discovery of ''an undeclared hazardous material'' in § 171.16, and those reporting requirements are adequate and comprehensive.

• The TS–R–1 provisions pertaining to training. These training requirements are already found in Part 172, Subpart H for all hazardous materials, including Class 7 (radioactive) materials.

• For materials other than liquids, the TS–R–1 provision requiring that packages containing radioactive material to be transported by air be capable of withstanding, without leakage, an internal pressure that produces a pressure differential of not less than maximum normal operating pressure plus 95 kPa. As noted in Section II.A, above, PHMSA is proposing to adopt this requirement for liquids; however, for solid types of contents PHMSA believes that this requirement is flawed, since it unintentionally prohibits air transport of packages containing solid radioactive contents that do not need airtight containment systems to prevent leakage of the radioactive material under a large drop in external pressure. Consideration of a proposal to incorporate this requirement into the HMR in its entirety is postponed pending the outcome of discussions with IAEA member states regarding this issue.

• The TS–R–1 change that removes the restriction on radiation level increase as a criterion for passing the additional performance tests required of a Type A package used for liquid Class 7 (radioactive) contents, so that only the containment requirement would have to be satisfied. PHMSA sees no safety justification for this change, and is not proposing to adopt it.

• The revised TS–R–1 provision pertaining to the fissile material exception on consignment mass limits. The HMR currently has more restrictive requirements, which mirror NRC regulations.

• The revised TS–R–1 provisions on geometry requirements applicable to tested fissile material packages. This TS–R–1 change is applicable to NRC requirements and is not within the scope of this rulemaking.

• The TS–R–1 change to replace ''edges'' with ''edge'' when describing the end of a bar used for the penetration test for hypothetical accident conditions. This TS–R–1 change is applicable to NRC requirements and is not within the scope of this rulemaking. (see, however, a similar proposed change to the HMR in § 173.469 for the special form percussion test.)

• The TS–R–1 revisions pertaining to the solar insolation conditions to be assumed in demonstrating that a Type B(U) package will satisfy the performance tests for normal conditions of transport. This TS–R–1 change is applicable to NRC requirements and is not within the scope of this rulemaking.

• The TS–R–1 change in the definition of ''multilateral approval.'' The current HMR definition of ''multilateral approval'' is consistent with the TS–R–1 change.

• The TS–R–1 amendment describing dose ranges for which various radiation protection measures are advised. The HMR do not currently require a radiation protection program, and PHMSA does not intend to address that issue in this rulemaking.

• The TS–R–1 amendment to list more detailed conditions for the shipment of uranium hexafluoride (UF_6). PHMSA believes current requirements in the HMR for transporting uranium hexafluoride are adequate, as supported by the strong safety history for such shipments.

III. Section-by-Section Review

Part 171

Section 171.7

Section 171.7 lists all standards incorporated by reference into the HMR. PHMSA evaluated the following updated international standards pertaining to transportation of radioactive material and determined that the revised standards provide an enhanced level of safety without imposing significant compliance burdens. These standards have a well-established and documented safety history; their adoption will maintain the high safety standard currently achieved under the HMR. Therefore, PHMSA proposes to update the incorporation by reference material for the ''International Atomic Energy Agency (IAEA) Regulations for the Safe Transport of Radioactive Material, 1996 Edition (Revised), No. TS–R–1 (ST–1, Revised),'' and for International Standards Organization standard ''ISO 2919–1980(E) Sealed radioactive sources—classification.''

The standards would be updated as follows:

• IAEA, Regulations for the Safe Transport of Radioactive Material, 2009 Edition, Safety Requirements, No. TS–R–1.

• ISO 2919–1999(E) Radiation Protection—Sealed radioactive sources—General requirements and classification.

There are some minor changes in the newer edition of the ISO 2919 Standard. For example, in the requirements for the temperature test for Classes 4, 5, and 6, the 1980 Edition (in paragraph 8.2.2) allows the source used in the high temperature test or a second test source to be used for the thermal shock test. The 1999 Edition (in paragraph 7.2.2) does not allow the use of a second test source. In addition, the 1980 Edition requires only that the test source be held at the maximum temperature for 15

minutes before being subjected to the thermal shock test, while the 1999 edition requires that the source be held at the maximum temperature for at least an hour before carrying out the thermal shock test.

Section 173.469 allows the use of the ISO 2919 category 4 impact test as a substitute for the IAEA impact and percussion tests, and the ISO category 6 temperature test as a substitute for the IAEA heat test. To allow consideration for use of sources where these ISO tests are performed instead of the IAEA tests, PHMSA is proposing to allow testing against the 1999 Edition of ISO 2919 in § 173.469, as opposed to the presently referenced 1980 Edition. Furthermore, since the category 6 ISO temperature test for either version of ISO 2919 is more stringent than the IAEA heat test (which requires no thermal shock test at all), PHMSA is not proposing to require tests to be redone for sources that used the 1980 ISO 2919 classification tests to demonstrate their special form character.

In § 171.7, PHMSA is also proposing to delete references to specification packages which are being removed from the HMR in this rulemaking. PHMSA is proposing to remove section 178.358 for 21PF overpacks and section 178.360 for 2R vessels, and proposing to revise the table of references by deleting references to those sections and removing entries that were referenced by those sections.

Part 172

Section 172.203

Section 172.203 sets forth additional requirements for shipping descriptions on shipping papers. Paragraph (d) currently lists additional information that must be included in the description of a Class 7 (radioactive) material.

Paragraph (d)(2) requires the inclusion of the physical and chemical form of the material, if the material is not in special form. PHMSA is proposing to revise paragraph (d)(2) to specify that when a material is in ''special form'' the words ''special form'' must be included in the description, unless those words already appear in the proper shipping name. This ensures that if the material is special form the reader (*i.e.,* carrier, emergency responder, consignee, *etc.*) is aware that the potential for contamination is negligible. In addition, for most radionuclides, the maximum activity that can be transported in a Type A package is greater for special form radioactive material (maximum activity A_1) than for normal form (maximum activity A_2), so having the information available puts the stated activity level in perspective for enforcement authorities, emergency responders and carriers, thus reducing the likelihood of delays in transportation or emergency response.

Paragraph (d)(3) requires the activity contained in each package of the shipment in terms of the appropriate SI units be listed. In the January 26, 2004 final rule, PHMSA stated that the activity of progeny in radioactive decay chains should be included in the total activity required on shipping papers and labels. However, PHMSA also stated that, when A_1 or A_2 values include contributions from daughter nuclides with half lives less than 10 days, and no daughter has a half life greater than that of the parent, the parent and those daughters are to be treated as a single radionuclide for the contribution of that chain to the ''total activity'' required to be included on the shipping paper and on the labels. PHMSA noted this approach would occasionally lead to a situation where the true activity contents of the package can be greater than the ''total'' activity listed on the shipping paper and labels. PHMSA is proposing to avoid such situations by requiring that the ''total'' activity of all radionuclides present in the package including all parent radionuclides and daughter products, even those daughters that meet the above conditions, be accounted for in the calculation of the total activity to be included on the shipping paper and on the labels. Further, PHMSA is proposing to more closely align with the wording in TS–R–1 by specifying that the activity should be the maximum activity of the radioactive contents during transport. Including the term ''maximum'' clarifies that in situations where the total activity might change during the expected time the package is in transport, the maximum calculated value should be used to properly bound and communicate the hazard of the material during transport. PHMSA is also proposing to amend this paragraph to permit the mass of each fissile nuclide for mixtures when appropriate to be included.

Paragraph (d)(4) requires the inclusion in the shipping description of the category of label applied to a Class 7 (radioactive) material package. PHMSA is proposing to revise the example in paragraph (d)(4) to clarify that the word ''RADIOACTIVE'' is not required to be included in the description of the category of label.

Section 172.310

This section sets forth marking requirements for packages containing Class 7 (radioactive) materials. Paragraph (b) requires that each industrial, Type A, Type B(U), or Type B(M) package must be legibly and durably marked on the outside of the packaging, in letters at least 13 mm (0.5 in) high with the appropriate marking. However, section 178.350 requires that each Specification 7A packaging comply with the marking requirements of § 178.3, which requires the marking to be at least 12.0 mm (0.47 inches) in height, with exceptions for smaller packages. PHMSA is proposing to correct this discrepancy by amending the section 172.310 marking requirement to be the same as the 178.350 requirements.

Section 172.402

This section sets forth additional requirements for the labeling of packages. Paragraph (d) specifies additional labeling requirements for packages containing a Class 7 (radioactive) material. PHMSA is proposing to revise paragraph (d)(1) to clarify that for a package containing a Class 7 (radioactive) material that meets the definition of one or more additional hazard classes a subsidiary label is not required on the package if the non-radioactive material conforms to the small quantity exception in § 173.4, excepted quantities exception in § 173.4a, or de minimis exceptions in § 173.4b.

Section 172.403

This section sets forth requirements for the labeling of packages of radioactive material. Paragraph (d) specifies the requirements for the labeling of EMPTY packages and references paragraph 173.428(d). In HM–230, this paragraph was redesignated as 173.428(e), but the reference to it in 172.403(d) was not changed. PHMSA is proposing to correct this reference.

PHMSA is also proposing to revise paragraph (g)(2) to be consistent with the change proposed herein for paragraph 172.203(d)(3) to clarify that the activity shown on the label should include the activity of all radionuclides present in the package. PHMSA is proposing to more closely align with the wording in TS–R–1 by specifying that the activity should be the maximum activity of the radioactive contents during transport. Further, PHMSA is proposing to amend the activity printing requirement on the RADIOACTIVE label to permit the mass of each fissile nuclide, as appropriate for mixtures, to be included.

Section 172.504

This section sets forth general placarding requirements for bulk

packagings, freight containers, unit load devices, transport vehicles or rail cars containing hazardous materials. In Table 1 of the placarding tables in paragraph (e), PHMSA is proposing to require conveyances carrying fissile material packages, unpackaged low specific activity (LSA) material or surface contaminated object (SCO) material in category I (*i.e.,* LSA–I and SCO–I respectively), all conveyances required by §§ 173.427 and 173.441 to operate under exclusive use conditions, and all closed vehicles used in accordance with § 173.443(d) to be placarded. Currently, placards are only required for class 7 shipments that have Radioactive Yellow III labels and for exclusive use shipments of LSA material and SCO transported in accordance with § 173.427(b)(4) and (5) or (c).

Section 172.505

This section sets forth placarding requirements for subsidiary hazards. In paragraph (b), PHMSA is proposing to remove the reference to ''low specific activity uranium hexafluoride'' as the change PHMSA is proposing to section 173.420, paragraph (e) would require that the uranium hexafluoride shipping description should take precedence over the shipping description for LSA material and thus there would be no shipments of uranium hexafluoride allowed with low specific activity as part of the proper shipping name. The proposed revision to paragraph (e) requires that all shipments of 454 kg (1,001 pounds) or more gross weight of non-fissile, fissile-excepted, or fissile uranium hexafluoride be placarded with a CORROSIVE placard as well as the required RADIOACTIVE placard.

Part 173

Section 173.4

Section 173.4 specifies exceptions for transporting small quantities of certain hazardous materials by highway and rail. PHMSA is proposing to revise paragraph (a)(1)(iv) to remove the reference to § 173.425. Currently, paragraph (a)(1)(iv) references §§ 173.421, 173.424, 173.425 and 173.426; §§ 173.421 and 173.424 already cite the activity limits in § 173.425, while 173.426 is independent of the activity, so long as the dose rate limit of § 173.421(a)(2) is met.

In addition, PHMSA is proposing to revise paragraph (b) to specify that small quantities of other hazardous materials that are also Class 7 (radioactive) materials must satisfy the requirements of § 173.421, § 173.424, or § 173.426 in their entirety. As a result, this requires small quantities of other hazardous materials that also meet the definition of a Class 7 (radioactive) material to satisfy the requirements of § 173.422. Consequently this change would require the package to be marked with the UN number for the excepted package category (see § 173.422(a)). This change is proposed for consistency with the situation which would occur if the radioactive material did not have a small quantity of another hazard class; if the other hazard were not present, the UN marking would be required for the excepted radioactive material package.

The proposal to add a reference to § 173.426 in paragraph 173.4(b) is made in order to be consistent with paragraph § 173.4(a)(1)(iv).

Section 173.25

Section 173.25 sets forth requirements for overpacks of hazardous materials packages. Currently, § 173.25(a)(4) requires an overpack to be marked with ''OVERPACK'' when specification packagings are required and the package markings are not visible; however, for Class 7 that applies only to DOT 7A, Type A packages. PHMSA is proposing to revise that paragraph to require the ''OVERPACK'' marking on all overpacks containing packages of Class 7 (radioactive) materials, unless package type markings representative of each Class 7 package, contained therein, are visible from the outside of the overpack.

Section 173.401

PHMSA is proposing to modify the scoping statement in § 173.401(b)(4) to add the phrase ''which are either in their natural state, or which have only been processed for purposes other than for extraction of the radionuclides.'' This proposal aligns domestic regulations with the international standard (TS–R–1) and clarifies that the exception applies to processed natural material and ore.

PHMSA is proposing to add a new paragraph (b)(5) to clarify that non-radioactive solid objects with radioactive substances present on any surfaces in quantities not exceeding the limits cited in the definition of contamination in § 173.403 are not subject to the Class 7 (radioactive) material requirements of the HMR.

Section 173.403

Section 173.403 contains definitions specific to Class 7 (radioactive) materials. In this NPRM, PHMSA is proposing to revise the definitions of contamination, criticality safety index, fissile material, low specific activity and LSA–I, radiation level, and uranium.

PHMSA is proposing to change the definition of contamination by replacing the words ''radioactive contamination'' in the text for ''Fixed radioactive contamination'' and ''Non-Fixed radioactive contamination'' with the word ''contamination'' alone. The reason is that an object may have radioactive ''substances'' on its surface with activity/area in excess of the values used to define contamination (so that the object is ''contaminated''), and yet if the total activity of those substances is below the exempt consignment activity limit, the contaminated object would not be subject to regulation as a ''radioactive material'' (Class 7 material) as defined in 173.403 The word ''contamination'' instead of the phrase ''radioactive contamination'' also corresponds more closely to the language used in the definition of contamination in TS–R–1. In addition, PHMSA is replacing the phrase ''contamination exists in two phases'' with ''there are two categories of contamination,'' because PHMSA believes the word ''categories'' is more accurate in establishing the two contamination types than the word ''phases.''

PHMSA is proposing to revise the definition of ''criticality safety index'' to include the sum of criticality safety indices of all fissile material packages contained within a conveyance. This revision is necessary for consistency with the criticality safety index limits on conveyances in § 173.457(d).

PHMSA is proposing to revise the definition of ''fissile material'' to align with NRC's definition and to clarify that certain exceptions are provided in § 173.453.

PHMSA is proposing to adopt the TS–R–1 change in the definition of ''low specific activity (LSA) material'' that modifies the wording for the second category of LSA–I to include liquid unirradiated natural or depleted uranium or natural thorium, in addition to the previously included terms. Additionally, PHMSA proposes to correct an inconsistency between the NRC definition and the HMR definition of Low Specific Activity (LSA) material. Presently, the definition contains, in category (iv) of LSA–I, the exclusion of fissile material, which is not excepted under § 173.453. The NRC definition has this restriction not in category (iv) of LSA–I, but rather in the introductory paragraph that encompasses LSA–I, –II, and –III. It is PHMSA's intention to prevent the possibility of fissile LSA or SCO, thus PHMSA proposes to change the definition of Low Specific Activity (LSA) material to correspond with the existing NRC definition.

PHMSA is proposing to revise the definition of ''radiation level'' to clarify the types of radiation that contribute to the radiation level.

PHMSA is proposing to revise the definition of uranium, to allow for the possibility that natural uranium doesn't necessarily have to be chemically separated from accompanying constituents.

Section 173.410

Section 173.410 sets forth general design requirements for packages used for the transportation of Class 7 (radioactive) materials. In paragraph (i)(3), PHMSA proposes to revise a requirement for transporting liquid Class 7 (radioactive) material by air to specify that the package must be capable of withstanding, without leakage (*i.e.,* without release of radioactive material), a pressure differential of not less than the ''maximum normal operating pressure'' (defined in § 173.403) plus 95 kPa (13.8 psig). The HMR currently require a package to be capable of withstanding a pressure differential of not less than 95 kPa. PHMSA is proposing to require that the maximum pressure differential include the maximum normal operating pressure (defined in § 173.403) to account for the contribution of internally generated gas pressure to the overall pressure differential.

Section 173.411

Section 173.411 sets forth requirements for industrial packages. Throughout this section, PHMSA proposes to make editorial revisions to improve consistency with the nomenclature used for package types, and to clarify the meaning of two authorized alternatives to Type IP–2 or IP–3 packages.

PHMSA is proposing to replace the word ''packaging'' with ''package'' in each place it appears in this section. The reason for this is that in principle, it is the package—*i.e.,* the packaging with its radioactive contents—which must satisfy the pertinent performance requirements, as applicable. In the case of Type IP–1 packages, the only requirements that must be satisfied are design requirements. Therefore, PHMSA proposes to change IP–1 packaging to Type IP–1 package.

In addition, PHMSA is proposing to replace the terms IP–1, IP–2, and IP–3 with Type IP–1, Type IP–2, and Type IP–3 to make the designations for industrial packages more consistent with the language PHMSA uses for other Class 7 (radioactive) material package types, such as Type A, Type B(U), *etc.* Similar changes were made to various sections of TS–R–1 in the 2003 revision.

For consistency with the language in TS–R–1, and to provide a measurable requirement in paragraph (b)(2)(ii), PHMSA proposes to replace the requirement that package tests for Type IP–2 and Type IP–3 should not result in a significant increase in the external surface radiation levels with wording to indicate that the package tests should not result in more than a 20% increase in the maximum radiation level at any external surface of the package. Section 173.411 currently includes a 20% requirement for tank containers, tanks, freight containers, and metal intermediate bulk containers that are used as Type IP–2 or Type IP–3 packages; PHMSA is proposing to align the wording in these sections with that of TS–R–1.

PHMSA is proposing to revise the terminology used in describing the alternatives to Type IP–2 and IP–3 packages for materials, including liquids and gases, normally transported in various types of tanks. Section 173.411(b)(4) currently authorizes the use of ''tank containers'' as Type IP–2 or IP–3 packages under certain conditions, and the same is true in § 173.411(b)(5) for ''tanks, other than tank containers.'' There has been confusion associated with the meanings of these terms because the HMR do not define ''tank container.'' For this reason and for consistency with TS–R–1, PHMSA proposes to replace the phrase ''tank container'' with ''portable tank,'' which is defined in § 171.8 as ''a bulk packaging designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means.'' This definition goes on to specifically exclude, among others, (highway) cargo tanks and (rail) tank cars in the definition of portable tank. Thus by ''portable tank'' PHMSA means a multi-modal tank designed to be loaded, with its contents, on a flat-bed truck or rail car, or on a vessel. The second alternative used in TS–R–1 is, ''tanks, other than portable tanks.'' By virtue of the § 171.8 definition of ''portable tank,'' this would then refer to ''cargo tanks and tank cars'' and PHMSA proposes to use that phrase for clarity.

For consistency with the language in TS–R–1, PHMSA is proposing in § 173.411(b)(4) to replace the phrase, ''They are designed to conform to the standards prescribed in Chapter 6.7 of the United Nations Recommendations on the Transport of Dangerous Goods'' with the phrase, ''They are designed to satisfy the requirements prescribed in Chapter 6.7 of the United Nations Recommendations on the Transport of Dangerous Goods.'' Likewise, in § 173.411(b)(7), PHMSA proposes to replace the phrase, ''They are designed to conform to the standards prescribed in Chapter 6.5 of the United Nations Recommendations on the Transport of Dangerous Goods'' with the phrase, ''They are designed to satisfy the requirements prescribed in Chapter 6.5 of the United Nations Recommendations on the Transport of Dangerous Goods.''

Section 173.411(b)(5) authorizes the use of DOT Specification IM–101 or IM–102 steel portable tanks as Type IP–2 or IP–3 packages for the transport of LSA–I and LSA–II liquids and gases under the conditions in Table 6 of § 173.427. Since these are in fact ''portable tanks,'' PHMSA believes that they should more appropriately be cited under the authorization for portable tanks discussed above. However, because requirements for these DOT specification tanks are no longer listed in Part 178 of the HMR (as the manufacture of new IM–101 and IM–102 portable tanks was terminated as of December 31, 2002, and authorization for their use terminated on January 1, 2010), PHMSA proposes to remove the reference to these tanks in paragraph 173.411(b)(5) as possible Type IP–2 or Type IP–3 packages. Their use would still be permitted if it can be shown that they conform to the requirements of paragraph 173.411(b)(4). PHMSA proposes to revise paragraph 173.411(b)(5) to contain the TS–R–1 requirements for tanks, other than portable tanks, that is, cargo tanks and tank cars.

In paragraph (c), PHMSA proposes to extend the retention period for Type IP–2 and Type IP–3 package documentation from one year to two years after the offerror's latest shipment, to correspond to the minimum period an offeror is required to retain copies of shipping papers.

Section 173.412

Section 173.412 sets forth additional design requirements for Type A packages. Paragraph (f) requires the containment system to be capable of retaining its contents under the reduction of ambient pressure to 25 kPa (3.6 psi). This number has been 60 kPa (8.7 psi) for many years in the IAEA regulations, and to harmonize with TS–R–1 PHMSA proposes to change this limit to 60 kPa (8.7 psi) in § 173.412(f). An atmospheric pressure of 60 kPa corresponds roughly to an altitude of 13,800 feet. Thus a Type A package with a containment that can retain its

contents at this external pressure will be able to retain its contents for all altitudes normally encountered during surface transportation. Additional protection from leakage for transportation of liquids by air is given in § 173.410(i)(3), which requires that all types of packages be able to withstand a pressure differential of 95 kPa (13.8 psig).

Paragraph (j)(2) sets forth the limitation on changes to the external radiation field which may result from the various Type A package tests. Presently, the HMR require that there not be a ''significant increase'' in the radiation level recorded or calculated at the external surfaces of a Type A package before the test. In this NPRM, PHMSA proposes to revise paragraph (j)(2) to specify that the maximum radiation level at the external surface of the package not increase by more than 20%. PHMSA believes that this quantitative requirement is more objective and is also consistent with language in TS–R–1.

Paragraph (k)(3) sets forth requirements for the retention of liquid contents in a Type A package. Currently, the HMR require that the package have either sufficient suitable absorbent material to absorb twice the volume of the liquid contents, or ''Have a containment system composed of primary inner and secondary outer containment components designed to assure retention of the liquid contents within the secondary outer component in the event that the primary inner component leaks.'' To provide further clarity, PHMSA proposes to adopt the revised wording in TS–R–1, which states, ''Have a containment system composed of primary inner and secondary outer containment components designed to enclose the liquid contents completely and ensure their retention within the secondary outer component in the event that the primary inner component leaks.''

Section 173.415

Section 173.415 contains language stating Type A packages are authorized for shipment that do not contain quantities exceeding the A_1 or A_2 values for radionuclides in § 173.435. Paragraph (a) specifies the Specification 7A recordkeeping requirements. In this NPRM, PHMSA proposes to extend the retention period for Type A package documentation from one year to two years after the offerror's latest shipment, to correspond to the minimum period for which an offeror is currently required to retain copies of shipping papers. PHMSA is also proposing to include more detailed language describing the kinds of information expected to be included as part of the Type A package documentation. This would include an engineering drawing and description of the package showing materials of construction, dimensions, weight, closure and closure materials (including gaskets, tape, *etc.*) of each item of the containment system, shielding and packing materials used in normal transportation. If the packaging is subjected to the physical tests of § 173.465–§ 173.466, complete documentation of testing would be required, including date, place of test, signature of testers, a detailed description of each test performed including equipment used, and the damage to each item of the containment system resulting from the test. For any other demonstration of compliance with tests authorized in § 173.461, a detailed analysis would need to be documented which shows that, for the contents being shipped, the package meets the pertinent design and performance requirements for a DOT 7A Type A specification package.

Section 173.416

Section 173.416 provides a list of authorized Type B packages. PHMSA is proposing to remove the present paragraph (c), which allows the continued use of an existing Type B packaging constructed to DOT specification 6M, 20WC, or 21WC until October 1, 2008. These packages are no longer authorized for transport. PHMSA is also proposing to add a new paragraph (c), which authorizes the domestic shipment of a package conducted under a special package authorization granted by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 71.41(d).

Section 173.417

Section 173.417 provides a list of authorized fissile materials packages. PHMSA is proposing to remove the present paragraph (c), which allows the continued use of an existing fissile material packaging constructed to DOT specification 6L, 6M, or 1A2 until October 1, 2008. These packages are no longer authorized for transport. Additionally, PHMSA proposes to delete the references in paragraph (a)(3), paragraph (b)(3), and paragraph (b)(3)(ii) Table 3 to 21PF overpacks as those overpacks are no longer in service. In addition, PHMSA is correcting a typographical error in the heading of Table 3 in paragraph (b)(3)(ii). PHMSA is proposing to add a new paragraph (c), which authorizes the domestic shipment of a package conducted under a special package authorization granted by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 71.41(d).

Section 173.420

Section 173.420 sets forth requirements for uranium hexafluoride (fissile, fissile excepted and non-fissile). In this NPRM, PHMSA is proposing to remove paragraph (a)(2)(ii), which references specifications for DOT–106A multi-unit tank car tanks. PHMSA believes that these multi-unit tank car tanks are not used, nor planned to be used for transporting UF_6. The present paragraph (a)(2)(iii) would be renumbered as (a)(2)(ii).

In addition, PHMSA is proposing to add a new model 30C packaging model in the table in the revised paragraph 173.420(a)(2)(ii)(D), to have the same minimum thickness of 7.93 mm (0.312 in) as the 30B cylinder. This reflects the recent addition of the model 30C cylinder in the American National Standards Institute, ANSI N14.1 standard. The present requirements for UF_6 ''heels'' in a 30 inch cylinder meeting the requirements for a DOT Specification 7A Type A packaging, as presented in Table 2 in 173.417(a)(2), would hold for the 30C as well as the 30B cylinders.

PHMSA is proposing to add a paragraph (e) to require that, when there is more than one way to describe a UF_6 shipment, the proper shipping name and UN number for the uranium hexafluoride should take precedence (*e.g.,* the uranium hexafluoride shipping description should take precedence over the shipping description for LSA material). This is a TS–R–1 change that assures the corrosive hazard inherent in the shipment of UF_6 is identified in the shipment hazard communications.

Section 173.421

Section 173.421 sets forth requirements for limited quantities of Class 7 (radioactive) materials. Currently, § 173.421(b) permits excepted packages of limited quantities of radioactive material that are a reportable quantity of hazardous substance or waste to be shipped without having to comply with § 172.203(d) or § 172.204(c)(4). PHMSA proposes to extend this relief from these shipping paper requirements to all excepted packages that are a hazardous substance or waste by removing § 173.421(b) and adding the exclusion from § 172.203(d) and § 172.204(c)(4) to § 173.422.

Section 173.422

Section 173.422 sets forth additional requirements for excepted packages containing Class 7 (radioactive)

materials. In this NPRM, PHMSA is proposing to revise the introductory text to specify that a small quantity of another hazard class (as defined in § 173.4) that would otherwise qualify for shipment as a Class 7 (radioactive) material in an excepted package must also satisfy the requirements of § 173.422.

As noted above, § 173.421(b) currently permits excepted packages of limited quantities of radioactive material that are a hazardous substance or hazardous waste to be shipped without having to comply with § 172.203(d) or § 172.204(c)(4). PHMSA proposes to extend this relief from full shipping paper requirements to all excepted packages that are a hazardous substance or hazardous waste by moving the exclusion from § 172.203(d) and § 172.204(c)(4) provisions to § 173.422(e). PHMSA also proposes to add an exclusion from § 172.202(a)(5) for such packages.

PHMSA is also proposing to add to § 173.422(a) a requirement that all excepted packages whose contents meet the definition of a hazardous substance, be marked with the letters ''RQ''. This will provide consistency with existing marking requirements for a package containing a hazardous substance.

Section 173.427

In the introductory paragraph (a) of § 173.427, PHMSA proposed to change the phrase ''LSA material and SCO must be packaged * * *'' to ''LSA materials and SCO must be transported * * *'' This would free PHMSA from treating paragraphs (c) and (d) (which deal with unpackaged LSA/SCO, or with LSA or SCO which require packaging in accordance with NRC requirements in 10 CFR part 71) as exceptions, and clarify that they are subcategories of LSA material or SCO.

In paragraph 173.427(a)(6)(v), PHMSA is proposing to remove the placarding exception for shipments of unconcentrated uranium or thorium ores. The increased communication requirement, just as is the case for other exclusive use shipment of LSA or SCO, is intended to compensate for the fact that packaging requirements are minimal for these materials. PHMSA proposes to clarify that all of the placarding requirements of subpart F of part 172 must be met. The current version refers to vehicle placarding, however, subpart F of part 172 contains requirements for placarding of bulk packagings, freight containers, unit load devices, transport vehicles, and rail cars.

In paragraph 173.427(a)(6)(vi), PHMSA is proposing to require that when low specific activity (LSA) materials or surface contaminated objects (SCO) are shipped in accordance with that paragraph and contain a subsidiary hazard from another hazard class, the labeling required by 172.402(d) for the subsidiary hazard would be required. Presently, 173.427(a)(6)(vi) excepts such shipments from all marking and labeling requirements, other than for the stenciling or marking as ''RADIOACTIVE—LSA'' or ''RADIOACTIVE—SCO'', as appropriate. Shipping paper requirements in 172.202(a)(3) were revised in January 2009 such that a subsidiary hazard class or division number is not required to be entered when a corresponding subsidiary hazard label is not required. Thus, there is currently is no requirement for any communication that the subsidiary hazard is present. This proposed change would indicate the presence of the subsidiary hazard by use of the required label and a corresponding entry on the shipping paper.

PHMSA proposes in paragraph (b)(1) to replace IP–1, *etc.,* by Type IP–1, *etc.,* as proposed in § 173.411, to coincide more closely with the IAEA nomenclature in TS–R–1.

PHMSA proposes to rearrange the wording in paragraph (b)(4), to indicate that for an exclusive use shipment of less than an A_2 quantity, the packaging should meet the requirements of § 173.24a or § 173.24b, depending on whether the packaging would be considered non-bulk or bulk according to the definition in § 171.8. For the most part this distinction is irrelevant for radioactive material packages, but there are some cases, such as LSA liquids transported in portable tanks, where the bulk-packaging requirements are more appropriate.

In paragraph (b)(5), PHMSA proposes to withdraw the explicit authorization for certain DOT Specification tank cars and cargo tanks, and replace it with the general authorization for use of portable tanks, cargo tanks and tank cars as proposed in § 173.411. PHMSA believes that the presently authorized DOT Specification tank cars and cargo tanks are seldom used, and that the § 173.411 requirements, both present and proposed, offer a broader range of options.

In § 173.427(c)(3), PHMSA is proposing to change the phrase ''where it is suspected that non-fixed contamination exists * * *'' to ''where it is reasonable to suspect that non-fixed contamination exists * * *'' This proposal is intended to clarify that the shipper must have a justifiable reason if he decides that it is not necessary to take measures to ensure that contamination from SCO–I is not released into the conveyance or to the environment.

PHMSA is also proposing to add a new paragraph (c)(4) to require that when unpackaged LSA–I material or SCO–I required to be transported exclusive use is contained in receptacles or wrapping materials, the outer surfaces of the receptacles or wrapping materials must be marked ''RADIOACTIVE LSA–I'' or ''RADIOACTIVE SCO–I'' as appropriate, and a new paragraph (c)(5) to require that all highway or rail conveyances carrying unpackaged SCO–I be placarded.

The proposed changes in paragraphs (a) (which would remove the present restriction to materials not ''excepted by paragraph (c) or (d) of this section'') and (a)(6)(v) (which requires placarding of exclusive use shipments), already imply that all other exclusive use shipments of unpackaged LSA–I or SCO–I would have to be placarded, because of § 173.427(c)(2), which requires that all shipments of unpackaged LSA–I and SCO–I with contamination greater than the listed values be shipped under exclusive use. The increased marking and placarding requirements for the transportation of unpackaged LSA–I and SCO–I are intended to further identify the presence of a hazard in view of the lesser packaging requirements for these low-level materials.

In an attempt to harmonize more closely with the IAEA regulations, PHMSA is proposing a modification to Table 5. PHMSA proposes to add a separate column for conveyances traveling by inland waterways, in which some authorized activity limits for LSA material and SCO would be reduced from those for other types of conveyances.

In Table 6, PHMSA is proposing to replace the terms IP–1, IP–2, and IP–3 with Type IP–1, Type IP–2, and Type IP–3 to be consistent with the similar changes proposed in § 173.411.

Section 173.433

Section 173.433 sets forth requirements for determining radionuclide values, and for listing radionuclides on shipping papers and labels. In this NPRM, PHMSA is proposing to revise paragraphs (b), (c), and (d)(3).

PHMSA proposes to revise paragraph (b) to clarify the use of line 3 in Tables 7 and 8 for when no relevant data are available. Currently, paragraph (b) allows use of Table 7 for values of A_1 and A_2 and Table 8 for exemption

values when the individual radionuclides are not listed in section 173.435 or section 173.436. Tables 7 and 8 also indicate values that may be used when ''No relevant data are available,'' but there is no reference in the text to when those entries may be used.

PHMSA also proposes to revise paragraph (c)(1) to conform to the current wording in TS–R–1. Presently, when shippers calculate an A_1 or A_2 value not in the table in § 173.435 (provided they are first approved by the Associate Administrator or, for international transport, multilateral approval is obtained from the pertinent Competent Authorities), the HMR state ''it is permissible to use the A_2 value related to its solubility class * * *'' This would be replaced by ''it is permissible to use an A_2 value calculated using a dose coefficient for the appropriate lung absorption type * * *'' This proposed minor change in wording (1) takes into account that there is no ready-made list of A_2 values related to solubility classes, and (2) recognizes that in the Q-system (see Appendix I of ''Advisory Material for the IAEA Regulations for the Safe Transport of Radioactive Material,'' IAEA Safety Standards Series No. TS–G–1.1 (Rev. 1)) the doses for the inhalation pathway are calculated on the basis of dose coefficients for the lungs, which in turn are classified by the International Commission on Radiological Protection according to lung absorption types F (fast), M (medium), and S (slow). Further, PHMSA is proposing to add language to paragraph (c) to clarify that this method of calculation only applies to the alternative specified in paragraph (b)(2), which requires approval by the Associate Adminstrator, or for international transportation, multilateral approval from the pertinent Competent Authorities.

PHMSA is also proposing to revise paragraph (d)(3) to correct incorrect references to other paragraphs. Currently, the explanation of the symbols in paragraph (d)(3) references paragraph (d)(2) and itself. It should reference paragraphs (d)(1) and (d)(2).

PHMSA is also proposing to modify two of the category descriptions in Tables 7 and 8 of § 173.433 for default basic radionuclide values, conforming as nearly as possible to the current wording in TS–R–1. The second category presently reads ''Only alpha emitting nuclides are known to be present''; in Tables 7 and 8 PHMSA proposes to replace it with ''Alpha emitting nuclides, but no neutron emitters, are known to be present.'' In Table 7 PHMSA proposes to add a footnote for the case that alpha emitters and beta or gamma emitters but no neutron emitters are known to be present. The reason for this footnote is that the IAEA default A_1 value for the case when alpha emitters are known to be present is larger than the value when only beta or gamma emitters are known to be present; the footnote entry clarifies that if both alpha and beta or gamma emitters are present, the lower default A_1 value should be used. The lesser A_1 default value that would be prescribed in this case would be the more logical and conservative choice. The third category presently reads ''No relevant data are available''; PHMSA proposes to replace it with ''Neutron emitting nuclides are known to be present or no relevant data are available.'' The new wording gives appropriate instructions for the appropriate default values to be used in the case that neutrons are known to be present, and in the case that they are known not to be present. With the present wording, there is no indication as to which values should be used if neutrons are known to be present. The proposed wording clarifies that if there are different default values for different types of radiation, the smaller, most conservative value for the types of radiation known to be present should be used.

Section 173.435

A_1 and A_2 values are used in the international and domestic transportation regulations to specify the amount of radioactive material that is permitted to be transported in a particular packaging, and for other purposes. The A_1 and A_2 values for the most commonly transported radionuclides are listed in the ''Table of A_1 and A_2 values for radionuclides'' in § 173.435. PHMSA is proposing to revise the table as follows:

- In the entry for Cf-252, in column 1, the reference to footnote (h) would be removed, and in columns 3 and 4, the A_1 value is revised;
- A_1 and A_2 values and the intrinsic specific activity for Krypton-79 (Kr-79) would be included in the table in 173.435; the A-values were calculated using the Q system, and added to TS–R–1 in its 2009 edition, and the specific activity calculated from the relation specific activity in Bq/g = 0.693 times Avogadro's number divided by the half life in seconds times the atomic mass.
- In the entry for Mo-99, in column 1, the reference to footnote (i) would be removed and a reference to footnote (h) is added in its place;
- In the entry for Ir-192, the footnote (c) reference would be moved to the special form columns only; and
- In the footnotes to the table, footnote (a) would be revised, footnote (c) would be revised to indicate that the comparison of ''output'' activity to the A-values is restricted to special form sources of Ir-192, footnote (h) would be removed, and footnote (i) would be redesignated as footnote (h).

Section 173.436

Section 173.436 specifies the nuclide-specific exemption concentrations and the nuclide-specific exemption-consignment activity limits for radionuclides. The HMR defines a Class 7 (radioactive) material as being any material where both the activity concentration and total activity in the consignment exceed the values specified in the table in § 173.436 or values derived according to instructions in § 173.433. To reflect corresponding changes in TS–R–1, PHMSA is proposing to revise the total consignment activity exemption for Tellurium-121m (Te-121m), from 1×10^5 Bq to 1×10^6 Bq and to add an entry for Krypton-79 (Kr-79). PHMSA is also proposing to revise the list of parent nuclides and their progeny listed in secular equilibrium in footnote (b) to the table. The chains for parents Cerium-134 (Ce-134), Radon-220 (Rn-220), Thorium-226 (Th-226), and Uranium 240 (U–240) are proposed to be removed. PHMSA also proposes to add an entry for Silver-108m (Ag-108m). This is being done because when the nuclide-specific basic values from the BSS (IAEA Safety Series No. 115, International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources) were adopted for transportation purposes, Table I in TS–R–1 was slightly modified through the addition of a few radionuclides and the elimination of others, while corresponding changes in the list in footnote (b) were inadvertently overlooked.

Section 173.443

Section 173.443 specifies contamination control limits. Revisions to each of the affected paragraphs in this section are described as follows:

PHMSA proposes to reorganize paragraph (a); as a result, paragraphs 173.443(a)(1) and (2) would become 173.443(a)(1)(i) and (ii) respectively. In paragraph (a), PHMSA proposes to apply the existing requirement that the level of non-fixed (removable) radioactive contamination on the external surfaces of each package be kept as low as reasonably achievable to the external and internal surfaces of an overpack, freight container, tank,

intermediate bulk container, or conveyance. The proposed amendment ensures that any associated transportation equipment utilized for transportation does not exhibit excessive levels of non-fixed (removable) radioactive contamination and aligns the domestic contamination control requirements with international standards in TS–R–1.

While PHMSA is also proposing to extend the application of the non-fixed (removable) radioactive contamination limits found in § 173.443(a) to the external and internal surfaces of an overpack, freight container, tank, intermediate bulk container, and conveyance, PHMSA proposes to exclude the internal surfaces of a freight container, tank, intermediate bulk container or conveyance dedicated to the transport of unpackaged radioactive material in accordance with § 173.427(c) and remaining under that specific exclusive use. Again, the reasoning for this proposal is to ensure that any associated items utilized during transportation do not exceed designated upper limits for non-fixed (removable) radioactive contamination, while excepting the internal surfaces of components used to transport unpackaged Class 7 (Radioactive) material under exclusive use, so long as they remain under that specific exclusive use. This exception eliminates the need for unnecessary decontamination at the end of or between trips, so long as exclusive use conditions continue to be instituted, when transporting unpackaged LSA–I and SCO–I and aligns domestic contamination control requirements with international standards in TS–R–1.

PHMSA is proposing a new paragraph 173.443(a)(2) to require that contamination determinations be required for conveyances used for non-exclusive use shipments only in the case that there is reason to suspect that contamination might be present.

In Table 9, which is referenced in the new paragraph 173.443(a)(1)(i), PHMSA proposes to change the contamination limits in the column labeled dpm/cm^2 from 220 to 240 for contamination due to beta and gamma emitters and low toxicity alpha emitters, and from 22 to 24 for that due to all other alpha emitting nuclides, respectively. Historically the values 220 and 22 resulted from the fact that the contamination limits were originally expressed as 10^{-4} and 10^{-5} uCi/cm^2 (microcuries per cm^2) respectively, which in dpm/cm^2 are equivalent to 222 and 22. In SI units, these limits are equivalent to 3.7 and 0.37 Bq/cm^2 respectively. Because the IAEA decided to round these numbers to one significant figure, the limits became 4 and 0.4 Bq/cm^2. Since SI units are the regulatory standard units (see § 171.10), the limits are 4 and 0.4 Bq/cm^2 and a direct conversion from those values gives 240 and 24 dpm/cm^2.

In paragraph (b), PHMSA is proposing to extend the non-fixed (removable) radioactive contamination limits established in this paragraph (up to ten times the limits in § 173.443(a) during exclusive use shipments by rail or highway, if the initial contamination is no greater than the § 173.443(a) limits) to the external and internal surfaces of overpacks, freight containers, tanks, intermediate bulk containers, and conveyances, in addition to the external surfaces of each package. This proposal ensures that any radioactive substances on the associated items utilized during transportation do not exceed the designated upper limits for non-fixed (removable) radioactive contamination of the package during transport.

In paragraph (c), PHMSA is proposing to eliminate the ambiguity and confusion concerning the phrase ''returned to service,'' primarily for conveyances, but also for overpacks, freight containers, tanks, and intermediate bulk containers that may have had radioactive substances deposited on them during certain Class 7 (radioactive) exclusive use transport scenarios. Under this proposal, with limited exceptions provided by §§ 173.443(a) and (d), a conveyance, overpack, freight container, tank, or intermediate bulk container used for exclusive use transport of radioactive materials under §§ 173.427(b)(4), 173.427(c), or 173.443(b) would need to be surveyed with appropriate radiation detection instruments and would have to exhibit a radiation dose rate at any accessible surface of no greater than 0.005 mSv per hour (0.5 mrem per hour), and removable radioactive surface contamination no greater than the limits in § 173.443(a), in order to continue to be used for one of the following specified Class 7 (radioactive) materials exclusive use transport scenarios:

(1) The use of the packaging exception for less than an A_2 quantity authorized in § 173.427(b)(4);

(2) The use of the authorization in § 173.427(c) to ship unpackaged LSA–I and SCO–I; and

(3) The use of the authorization in § 173.443(b) to ship packages that may develop increased contamination during transport up to ten times the normal package limits, so long as they meet the package limits at the beginning of transport.

The procedure described in § 173.443(c) would not be applicable, and would in fact generally be prohibited, for unrestricted return to general service of the item or conveyance. The rationale for this proposed change in wording of § 173.443(c), and of § 174.715(a), § 175.705(c), § 176.715, and § 177.843(a), is justified as follows: (1) If this ''returned to service'' criterion were to be considered a criterion for unrestricted release following exclusive use transport of Class 7 (radioactive) materials, it would be providing a radioactive material unrestricted transfer (free release) limit, which the U.S. DOT does not have the authority to do. (2) Given that non-hazardous material, or even foodstuffs, could be transported in contact with these items or conveyances, an unacceptable health physics practice would result if these limits were construed to be a criterion for free release, *i.e.,* for unrestricted radioactive material transfer. (3) Adhering to the removable contamination requirement (no greater than the § 173.443(a) values) and the radiation level requirement (no greater than 0.005 mSv per hour, or 0.5 mrem per hour, at the surface of the vehicle) of § 173.443(c) would not provide sufficient protection for unrestricted transfer, considering that over time factors such as weathering could gradually convert any fixed contamination to non-fixed contamination. (4) Such a practice of providing a free release or unrestricted transfer of radioactive material at these levels would be incompatible with currently generally accepted radiation protection practices.

In paragraph (d), PHMSA is proposing to require placarding of closed transport vehicles used solely for the exclusive transportation by highway or rail of Class 7 (radioactive) material packages with contamination levels that do not exceed 10 times the package contamination limits prescribed in paragraph (a) of § 173.443. PHMSA proposes to add the qualifier ''exclusive use'' to ensure that the exclusive use requirements described under the definition of ''exclusive use'' in § 173.403 are satisfied for these shipments.

Also in paragraph (d), PHMSA proposes to delete the word ''packages'' to allow this paragraph to apply to unpackaged radioactive material. This is also needed for consistency with similar requirements found in paragraphs 174.715(b) and 177.843(b).

In summary, this proposed rulemaking would establish a policy that, for exclusive use Class 7

(radioactive) transport required because of specific contamination issues, the return to service criteria for conveyances and associated items would be those described in § 173.443(c), *i.e.,* the radiation level at the surface of the conveyance and associated items must be no greater than 0.5 mrem per hour, and that the removable non-fixed contamination be no greater than the package limits in § 173.443(a). This ''return to service'' means only that the conveyance and associated equipment may then be used for another exclusive use shipment of radioactive materials using one of the three scenarios described above (but not for other exclusive use or non-exclusive use shipments, or for transporting non-hazardous materials). An exception would continue to be allowed for the inside surfaces of containers and conveyances dedicated to the transport of unpackaged LSA–I or SCO–I, or a closed transport vehicle, under continued exclusive use, in accordance with § 173.443(d).

If exclusive use transport has been completed, the consignee, who may then become a consignor offering the conveyance or items for transport, would need to determine if the consignment meets the HMR definition of radioactive material. If it does, the onward shipment would need to be transported in accordance with the HMR. If the consignment meets the Class 7 exempt criteria, or the shipper further decontaminates it until it does, then the consignment would not be regulated in transport as Class 7 (radioactive) material. However, ultimately, the HMR do not regulate the transfer of radioactive substances. Whether the consignor transfers the radioactive substances to a licensed or non-licensed entity (transported either under the HMR or not, based on the HMR definition of radioactive material) is dependent on the definitions and requirements for the transfer of the radioactive substance in their license agreement or other applicable regulations, without regard to the HMR radioactive material definition.

In paragraph (e), PHMSA is proposing to add required actions for leaking or suspect Class 7 (radioactive) packages or unpackaged material, which includes immediate actions and assessments, protective requirements, recovery techniques, and prerequisites for continued transport.

Section 173.453

In 173.453(d) PHMSA is proposing to insert a phrase that would allow a fissile material exception for uranium enriched in uranium-235 to a maximum of 1 percent by weight under the conditions stated there only if the material in question is essentially homogeneous. The NRC explains that prior to the DOT and NRC 2004 rulemakings, paragraph 10 CFR 71.53(b) stated that uranium enriched up to 1% was exempt (fissile excepted) ''provided that the fissile material is distributed homogeneously throughout the package contents and does not form a lattice arrangement within the package.'' The homogeneity and lattice arrangement language was eliminated and replaced with a restriction on special moderators when this exemption was revised in 2004 to its current form in 10 CFR 71.15(d) (based on recommendation from Oak Ridge National Laboratory in NUREG/CR–5342 ''Assessment and Recommendations for Fissile-Material Packaging Exemptions and General Licenses Within 10 CFR part 71''). In the absence of special moderators, such low enriched uranium systems can only become critical if configured into a very large, heterogeneous, water-moderated lattice. Subsequent to removing the requirement, the NRC was contacted by the U.S. Department of Energy (DOE) who indicated that it had a forthcoming shipment of slightly enriched uranium—just under 1% by weight—in the form of a large, heterogeneous lattice, which could not be shown to be subcritical in the presence of fresh water. This particular shipment was modified to reduce the amount of material per conveyance to a safely-subcritical mass, but resulted in the [NRC] staff revisiting this particular fissile material exemption. Further shipments of low-enriched uranium in a sufficiently-large heterogeneous lattice that would not be demonstrably sub-critical are considered to be very unlikely and it is believed that the DOE is likely to be the only shipper that may have such a shipment.

Section 173.465

Section 173.465 sets forth the requirements for Type A packaging tests. In paragraph (a), PHMSA propose to add a statement indicating when a test for a Type A package is deemed to be successful; this statement is currently found in § 173.412(j), but including it with the description of the test methods aids the reader and gives this section a more logical coherence. In § 173.465(d)(i), PHMSA is proposing to adopt the revised TS–R–1 language to clarify that the stacking test should use five times the maximum weight of the loaded package.

Section 173.466

Section 173.466 specifies additional tests for Type A packagings designed for liquids and gases. In paragraph (a), PHMSA proposes to add a statement indicating when a test for a Type A package designed for liquids or gases is deemed to be successful; this statement is currently found in § 173.412(k), but including it with the description of the test methods aids the reader and gives this section a more logical coherence.

Section 173.469

Section 173.469 specifies tests for special form Class 7 (radioactive) materials. In paragraph (b)(2)(ii), PHMSA is proposing to replace the word ''edges'' with the word ''edge'' since this refers to the edge of a flat circular surface.

In paragraph (b)(2)(iii), PHMSA is proposing to revise the thickness requirement for the lead sheet used for the percussion test to be not more than 25 mm (1 inch) in thickness, which is consistent with the requirement in TS–R–1.

Presently paragraph (d)(1) allows the use of Class 4 impact test prescribed in ISO 2919, ''Sealed Radioactive Sources—Classification'' as an alternative to the impact test and percussion test of § 173.469 if the mass of the special form material is less than 200 g. PHMSA is proposing to add another alternative that was added to TS–R–1. This would allow the use of the ISO 2919 Class 5 impact test as an alternative to the impact and percussion test if the mass of the special form material is less than 500 g.

As mentioned in the discussion of the listing in § 171.7 of a newer revision of ISO 2919, because some details of the heat test have changed, PHMSA proposes to add a grandfather provision in a new paragraph (e) in § 173.469 indicating that sources subjected to the ISO 2919 heat test before the effective date of the final rule to demonstrate that they are a special form that would not have to be retested.

Section 173.473

Section 173.473 specifies requirements for foreign-made packages. PHMSA is proposing to revise § 173.473 to update the reference to the most recent edition of the IAEA standards for transportation of radioactive materials, TS–R–1.

Section 173.476

Section 173.476 specifies approval requirements for the transportation of Class 7 (radioactive) materials. PHMSA is proposing to revise paragraph (a) to extend the retention period for special

form documentation from one year to two years after the offerror's latest shipment, to coincide with the minimum retention period for shipping papers. In addition, PHMSA proposes to revise paragraph (d) to replace the reference to an obsolete proper shipping name with a reference to the current proper shipping name, ''Radioactive material, Type A package, special form, fissile.''

Section 173.477

Section 173.477 established approval requirements of packagings containing greater than 0.1 kg of non-fissile or fissile-excepted uranium hexafluoride. In paragraph (a), PHMSA proposes to extend the retention period for uranium hexafluoride packaging documentation from one year to two years after the offerror's latest shipment, to coincide with the minimum retention period for shipping papers.

Section 174.715

In § 173.443(c), PHMSA proposes to eliminate the ambiguity and confusion concerning the phrase ''returned to service,'' for conveyances, overpacks, freight containers, tanks, and intermediate bulk containers that may have had radioactive substances deposited on them during certain Class 7 (radioactive) exclusive use transport scenarios. The changes proposed for § 174.715(a) are intended to make this section consistent with the changes proposed in § 173.443(c).

Section 174.700

PHMSA is proposing to remove and reserve the present paragraph (e), which provides special handling requirements for fissile material, controlled shipments. In the January 26, 2004 rulemaking (HM–230) PHMSA eliminated the concept of ''fissile material, controlled shipment,'' and removed other references to it from the HMR. Section 173.457 provides requirements for transportation of fissile material packages based on the criticality safety index (CSI) which makes this paragraph no longer necessary.

Section 175.702

Section 175.700(b)(2)(ii)(B) limits the CSI loaded on an aircraft to 100 for exclusive use, and § 175.700(b)(2)(ii)(A) limits the CSI to 50 for non-exclusive use. This is consistent with the requirements and limitations in § 173.457(e). However, § 175.702(b) does not place any such limit, rather it states that if a CSI total is reached in a group of packages then the groups must be separated by 20 feet. This seems to indicate that one could have more materials with a total CSI greater than 50 on an aircraft for passenger and cargo, and greater than 100 for exclusive use cargo only. To make these two sections consistent PHMSA proposes to replace § 175.702(b) and (c) with a new § 175.702(b) containing an introductory phrase to indicate that the limitations on combined (total) criticality safety indexes found in § 175.700(b) also apply.

Section 175.705

Section 175.705(c) presently requires that an aircraft in which Class 7 (radioactive) material has been released be taken out of service and not be returned to service or routinely occupied until the aircraft is checked for radioactive contamination and it is determined in accordance with § 173.443 of this subchapter that the dose rate at every accessible surface is less than 0.005 mSv per hour and there is no significant removable contamination. PHMSA is proposing to clarify that the totality of any radioactive substances remaining after clean-up must not meet the definition of radioactive material (as defined in § 173.403) before returning the aircraft to service.

Section 176.715

In § 173.443(c), we are proposing to eliminate the ambiguity and confusion concerning the phrase ''returned to service,'' for conveyances, overpacks, freight containers, tanks, and intermediate bulk containers that may have had radioactive substances deposited on them during certain Class 7 (radioactive) exclusive use transport scenarios. The changes proposed for § 176.715 are intended to make this section consistent with the changes proposed in § 173.443(c).

Section 177.843

In § 177.843(a), PHMSA is proposing to add references to § 173.427(c) and § 173.443(b). This is part of a larger proposed change that is intended to make this section consistent with the changes proposed in § 173.443(c). In § 173.443(c), PHMSA proposes to eliminate the ambiguity and confusion concerning the phrase ''returned to service,'' for conveyances, overpacks, freight containers, tanks, and intermediate bulk containers that may have had radioactive substances deposited on them during certain Class 7 (radioactive) exclusive use transport scenarios.

Section 178.350

Section 178.350 sets forth the general requirements for Specification 7A (Type A) packaging. PHMSA proposes to revise paragraph (c) to clarify that a DOT Specification 7A Type A package, must satisfy the requirements of 178.2 as well as the marking requirements of 178.3. This is proposed, in part, to emphasize that a manufacturer of DOT Specification 7A Type A packaging, must provide the user with appropriate information, including closure requirements, to ensure that the packaging is capable of successfully passing the applicable performance tests.

Sections 178.358, 178.358–1 Through 178.358–6

PHMSA is proposing to remove Sections 178.358 and 178.358–1 through § 178.358–6 because 21PF overpacks for uranium hexafluoride cylinders are no longer authorized.

Sections 178.360, 178.360–1 Through 178.360–4

PHMSA is proposing to remove Sections 178.360, and 178.360–1 through 178.360–4 pertaining to the DOT Specification 2R inside containment vessel since specification 2R was only required, under certain conditions, to be used as the inner container for the DOT Specification 20WC, 21WC, 6L, and 6M packages, and authorization for use of these latter packages was terminated on Oct. 1, 2008.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. In this notice, PHMSA is proposing to amend the HMR to more fully align with the most recent IAEA revisions to TS–R–1, including requirements governing packaging, contamination control, hazard communication, and revisions to various radionuclide specific values.

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

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The notice is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). If adopted, the changes proposed in this notice would apply to offerors and carriers of radioactive materials, (including distributors and radiopharmaceutical companies), packaging manufacturers, radioactive material consultants, and trainers. Potential benefits identified in this NPRM include enhanced safety resulting from the consistency of domestic and international requirements for transportation of radioactive materials. In addition, the proposed changes should permit continued access to foreign markets by domestic shippers of radiopharmaceuticals and other radioactive materials.

The majority of proposals should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America. The total net increase in costs to businesses in implementing the proposed amendments is considered to be minimal. Incremental costs of various proposals are expected to be offset by safety and regulatory efficiency benefits.

A preliminary regulatory evaluation is available for review in the public docket for this rulemaking. For a number of proposals, numerical data needed to derive accurate cost and benefit estimates was either incomplete, difficult to obtain, or non-existent. Therefore, PHMSA used professional judgment to estimate the incremental costs and benefits of certain proposals, and in some cases, PHMSA used a numerical range to account for uncertainty. PHMSA encourages interested parties to provide information and quantitative data relevant to the proposals in this notice and the associated costs and benefits described in the preliminary regulatory evaluation for this rulemaking.

C. Executive Order 13132

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on state or local governments and would either preempt state law or impose a substantial direct cost of compliance on them. PHMSA does not believe the changes proposed in this NPRM would have any substantial direct effect on state or local governments, but we invite states and local governments to comment on the effect that the adoption of this rule may have on state or local safety or environmental protection programs.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect the communities of the Indian Tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. PHMSA believes the changes proposed in this NPRM would facilitate the transportation of radioactive materials in international commerce by providing consistency with international transportation standards. The majority of amendments proposed in this notice should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies should realize economic benefits as a result of these amendments. Additionally, the effects of the proposals in this notice will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, PHMSA certifies that the amendments proposed in this notice would not have a significant economic impact on a substantial number of small entities. PHMSA invites interested parties to comment on this preliminary determination.

This notice has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137–0034, ''Hazardous Materials Shipping Papers and Emergency Response Information,'' and OMB Control Number 2137–0510, ''Radioactive Materials Transportation Requirements.'' Specifically, this NPRM may result in:

—A decrease in the annual information collection burden of OMB Control Number 2137–0034 due to reductions in the shipping paper requirements for excepted quantities of RAM shipments. These reductions in burden include not requiring the mass of these shipments on the shipping papers for air shipments in 172.202(a)(6), the additional description in 172.203(d) for RAM shipments, and not requiring the shippers certification statement for RAM shipments in 172.204(c)(4); and

—An increase in the annual information collection burden of OMB Control Number 2137–0510 due to an increase in the duration of a record keeping requirement in 173.411(c) and 173.415(a), a demonstration of compliance with test authorized in 173.415(a)(1) and (a)(2).

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. This notice identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements proposed in this NPRM.

PHMSA has developed burden estimates to reflect changes in this NPRM, and estimates the information collection and recordkeeping burden as proposed in this NPRM to be as follows:

OMB Control Number 2137–0034

Annual Decrease in Number of Respondents: 10,000.

Annual Decrease in Annual Number of Responses: 100,000.

Annual Decrease in Annual Burden Hours: 138.

Annual Decrease in Annual Burden Costs: $5,520.

OMB Control Number 2137–0510

Annual Increase in Number of Respondents: 3.

Annual Increase in Annual Number of Responses: 3.

Annual Increase in Annual Burden Hours: 53.

Annual Increase in Annual Burden Costs: $22,000.

PHMSA specifically requests comments on these information collections and the recordkeeping burden associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule with any revisions, PHMSA will resubmit any revised information collection and recordkeeping requirements to the OMB for reapproval.

Please direct your requests for a copy of this proposed revised information collection to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., 2nd Floor, Washington, DC 20590–0001.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates, under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. In accordance with the Council on Environmental Quality (CEQ) regulations, Federal agencies must conduct an environmental review considering (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

PHMSA is proposing to amend requirements in the Hazardous Materials Regulations (HMR) pertaining to the transportation of Class 7 (radioactive) materials based on recent changes contained in the International Atomic Energy Agency (IAEA) publication, entitled ''Regulations for the Safe Transport of Radioactive Material, 2009 Edition, IAEA Safety Standards Series No. TS–R–1,'' and additional miscellaneous amendments based on PHMSA's own initiative. The amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; facilitate international commerce; and make these requirements easier to understand.

2. Alternatives

In developing this proposed rule, PHMSA considered three alternatives:

1. Do nothing.

2. Adopt the international standards in their entirety.

3. Adopt IAEA regulations and DOT/NRC based changes that enhance safety and decrease regulatory compliance obstacles.

Alternative 3 is PHMSA's recommended alternative, because it is the only alternative that addresses, in all respects, the purpose of this regulatory action to facilitate the safe and efficient transportation of hazardous materials in international commerce. PHMSA rejected Alternative 1 because it would not facilitate uniformity, compliance, commerce and safety in the transportation of hazardous materials. PHMSA rejected Alternative 2 because PHMSA believes that, in some instances, more stringent regulations are necessary to enhance transportation safety, and in other instances less stringent regulations are appropriate to reduce economic burden. In addition, PHMSA and the NRC have identified domestic-only changes that would increase safety, reduce costs, and improve compliance.

3. Analysis of Environmental Impacts

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of Class 7 (radioactive) material are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean up of the accident scene. Most Class 7 (radioactive) materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released, and those that have the potential to significantly impact human life or the environment must meet strict packaging and handling standards to ensure that even under accident conditions the hazardous material would not be released into the environment.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous material release. Making the regulatory provisions in the HMR clearer and more consistent with international standards will promote compliance and facilitate efficient transportation, thereby enhancing the safe transportation of hazardous materials and the protection of the environment. Relaxing certain regulatory requirements is based on PHMSA's experience, review, and conclusion that the changes are safe. PHMSA certifies that the amendments proposed in this notice will not have a significant impact on the environment. PHMSA invites comments from

interested parties on the accuracy of this preliminary determination.

4. Agency Consultation and Public Participation

PHMSA, in consultation with the NRC, certifies that the amendments proposed in this notice will not have a significant impact on the environment. PHMSA invites comments from interested parties on the accuracy of this preliminary determination.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards to protect the safety of the American public, and PHMSA has assessed the effects of the proposed rule to ensure that it does not exclude imports that meet this objective. Accordingly, this rulemaking is consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

2. In § 171.7, the table in paragraph (a)(3) is amended as follows:

a. Under the entry ''International Atomic Energy Agency (IAEA),'' the entry ''IAEA Regulations for the Safe Transport of Radioactive Material, (IAEA Regulations), 1996 Edition (Revised), No. TS–R–1 (ST–1, Revised)'' is revised; and

b. Under the entry ''International Organization for Standardization,'' the entry ''ISO 2919–1980(E) Sealed radioactive sources—classification'' is revised.

§ 171.7 Reference material.

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Atomic Energy Agency (IAEA), P.O. Box 100, Wagramer Strasse 5, A–1400 Vienna, Austria:	
* * * * * * *	
IAEA Safety Standards, Regulations for the Safe Transport of Radioactive Material, 2009 Edition, Safety Requirements, No. TS–R–1.	171.22; 171.23; 171.26; 173.415; 173.416; 173.417; 173.473.
* * * * * * *	
International Organization for Standardization, Case Postale 56, CH–1211, Geneve 20, Switzerland:	
* * * * * * *	
ISO 2919–1999(E) Radiation Protection—Sealed radioactive sources—General requirements and classification.	173.469.
* * * * * * *	

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

4. In § 172.203, paragraphs (d)(2), (d)(3), and (d)(4) are revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(d) * * *

(2) For special form materials, the words ''special form'' must be included, unless the words ''special form'' already appear in the proper shipping name. If the material is not in special form, a description of the physical and chemical form of the material (generic chemical descriptions are permitted).

(3) The total maximum activity of the radioactive contents contained in each package during transport in terms of the appropriate SI units (*e.g.*, Becquerels (Bq), Terabecquerels (TBq), *etc.*). The activity may also be stated in appropriate customary units (Curies (Ci), milliCuries (mCi), microCuries (uCi), *etc.*) in parentheses following the SI units. Abbreviations are authorized. Except for plutonium-239 and plutonium-241, the weight in grams or kilograms of fissile radionuclides (or the mass of each fissile nuclide for mixtures when appropriate) may be inserted instead of activity units. For plutonium-239 and plutonium-241, the weight in grams of fissile radionuclides (or the mass of each fissile nuclide for mixtures when appropriate) may be inserted in addition to the activity units.

(4) The category of label applied to each package in the shipment. For example: ''RADIOACTIVE WHITE–I,'' or ''WHITE–I.''

* * * * *

5. In § 172.310, paragraph (b) is revised to read as follows:

§ 172.310 Class 7 (radioactive) materials.

* * * * *

(b) Each industrial, Type B(U), or Type B(M) package must be legibly and durably marked on the outside of the packaging, in letters at least 13 mm (0.5 in) high, with the words ''TYPE IP–1,'' ''TYPE IP–2,'' ''TYPE IP–3,'' ''TYPE B(U)'' or ''TYPE B(M),'' as appropriate. Each Type A package must be marked in accordance with § 178.350. A package which does not conform to Type IP–1, Type IP–2, Type IP–3, Type A, Type B(U) or Type B(M) requirements may not be so marked.

* * * * *

6. In § 172.402, paragraph (d)(1) is revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(d) * * *

(1) A subsidiary label is not required for a package containing material that satisfies all of the criteria in § 173.4, § 173.4a, or § 173.4b applicable to the subsidiary hazard class.

* * * * *

7. In § 172.403, paragraphs (d) and (g)(2) are revised to read as follows:

§ 172.403 Class 7 (radioactive) material.

* * * * *

(d) *EMPTY label.* See § 173.428(e) and of this subchapter for EMPTY labeling requirements.

* * * * *

(g) * * *

(2) *Activity*. The total maximum activity of the radioactive contents in the package during transport must be expressed in appropriate SI units (*e.g.*, Becquerels (Bq), Terabecquerels (TBq), *etc.*). The activity may also be stated in appropriate customary units (Curies (Ci), milliCuries (mCi), microCuries (uCi), *etc.*) in parentheses following the SI units. Abbreviations are authorized. Except for plutonium-239 and plutonium-241, the weight in grams or kilograms of fissile radionuclides (or the mass of each fissile nuclide for mixtures when appropriate) may be inserted instead of activity units. For plutonium-239 and plutonium-241, the weight in grams of fissile radionuclides (or the mass of each fissile nuclide for mixtures when appropriate) may be inserted in addition to the activity units.

* * * * *

8. In § 172.504, in paragraph (e), Table 1 is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

TABLE 1

Category of material (hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
1.1	EXPLOSIVES 1.1	172.522
1.2	EXPLOSIVES 1.2	172.522
1.3	EXPLOSIVES 1.3	172.522
2.3	POISON GAS	172.540
4.3	DANGEROUS WHEN WET	172.548
5.2 (Organic peroxide, Type B, liquid or solid, temperature controlled)	ORGANIC PEROXIDE	172.552
6.1 (Material poisonous by inhalation (see § 171.8 of this subchapter))	POISON INHALATION HAZARD	172.555
7 (Radioactive Yellow III or Fissile labels only)	RADIOACTIVE [1]	172.556

[1] RADIOACTIVE placard also required for all shipments of unpackaged LSA–I material or SCO–I, all conveyances required by §§ 173.427 and 173.441 of this subchapter to be operated under exclusive use, and all closed vehicles used in accordance with § 173.443(d).

* * * * *

9. In § 172.505, paragraph (b) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

* * * * *

(b) In addition to the RADIOACTIVE placard which may be required by § 172.504(e) of this subpart, each transport vehicle, portable tank or freight container that contains 454 kg (1001 pounds) or more gross weight of non-fissile, fissile-excepted, or fissile uranium hexafluoride must be placarded with a CORROSIVE placard on each side and each end.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

10. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

11. In § 173.4, paragraphs (a)(1)(iv) and (b) are revised to read as follows:

§ 173.4 Small quantity exceptions.

(a) * * *

(1) * * *

(iv) An activity level not exceeding that specified in § 173.421, § 173.424, or § 173.426, as appropriate, for a package containing a Class 7 (radioactive) material.

* * * * *

(b) A package containing a Class 7 (radioactive) material must also conform to the requirements of § 173.421, § 173.424, or § 173.426.

* * * * *

12. In § 173.25, paragraph (a)(4) is revised to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

(4) The overpack is marked with the word ''OVERPACK'' when specification packagings are required, or for Class 7 (radioactive) material when a Type A, Type B(U), Type B(M) or industrial (Type IP–1, –2, or –3) package is required. The ''OVERPACK'' marking is not required when the required markings representative of each package type contained in the overpack are visible from the outside of the overpack.

* * * * *

13. In § 173.401, paragraph (b)(4) is revised and a new paragraph (b)(5) is added to read as follows:

§ 173.401 Scope.

* * * * *

(b) * * *

(4) Natural material and ores containing naturally occurring radionuclides which are either in their natural state, or which have only been processed for purposes other than for extraction of the radionuclides, and which are not intended to be processed for the use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the exempt material activity concentration values specified in § 173.436, or determined in accordance with the requirements of § 173.433.

(5) Non-radioactive solid objects with radioactive substances present on any surfaces in quantities not exceeding the threshold limits set forth in the definition of contamination in § 173.403.

14. In 173.403, the definitions for ''Contamination,'' ''Criticality Safety Index (CSI),'' ''Fissile material,'' ''Low Specific Activity *(LSA)* material,'' paragraph (2) of the definition ''Package,'' ''Radiation level,'' and ''Uranium'' are revised to read as follows:

§ 173.403 Definitions.

* * * * *

Contamination means the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm^2 for beta and gamma emitters and low toxicity alpha emitters or 0.04 Bq/cm^2 for all other alpha emitters. There are two categories of contamination:

(1) Fixed contamination means contamination that cannot be removed from a surface during normal conditions of transport.

(2) Non-fixed contamination means contamination that can be removed from a surface during normal conditions of transport.

* * * * *

Criticality Safety Index (CSI) means a number (rounded up to the next tenth) which is used to provide control over the accumulation of packages, overpacks or freight containers containing fissile material. The CSI for packages containing fissile material is determined in accordance with the instructions provided in 10 CFR 71.22, 71.23, and 71.59. The CSI for an overpack, freight container, consignment or conveyance containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, consignment or conveyance.

* * * * *

Fissile material means plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium and natural uranium or depleted uranium, that has been irradiated in thermal reactors only, are not included in this definition. Certain exceptions for fissile materials are provided in § 173.453.

* * * * *

Low Specific Activity (LSA) material means Class 7 (radioactive) material with limited specific activity which is not fissile material or is excepted under § 173.453, and which satisfies the descriptions and limits set forth below. Shielding material surrounding the LSA material may not be considered in determining the estimated average specific activity of the LSA material. LSA material must be in one of three groups:

(1) LSA–I:

(i) Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides which are intended to be processed for the use of these radionuclides; or

(ii) Natural uranium, depleted uranium, natural thorium or their compounds or mixtures, provided they are unirradiated and in solid or liquid form; or

(iii) Radioactive material for which the A_2 value is unlimited; or

(iv) Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the values for activity concentration specified in § 173.436 or calculated in accordance with § 173.433, or 30 times the default values listed in Table 8 of § 173.433.

(2) LSA–II:

(i) Water with tritium concentration up to 0.8 TBq/L (20.0 Ci/L); or

(ii) Other radioactive material in which the activity is distributed throughout and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(3) LSA–III. Solids (*e.g.*, consolidated wastes, activated materials), excluding powders, that meet the requirements of § 173.468 and in which:

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, *etc.*);

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of Class 7 (radioactive) material per package by leaching when placed in water for seven days would not exceed 0.1 A_2; and

(iii) The estimated average specific activity of the solid, excluding any shielding material, does not exceed 2×10^{-3} A_2/g.

* * * * *

Package * * *

(2) ''Industrial package'' means a packaging together that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of §§ 173.410 and 173.411. Industrial

packages are categorized in § 173.411 as either

(i) ''Industrial package Type 1 (Type IP–1)'';

(ii) ''Industrial package Type 2 (Type IP–2)''; or

(iii) ''Industrial package Type 3 (Type IP–3)''.

* * * * *

Radiation level means the radiation dose-equivalent rate expressed in millisieverts per hour or mSv/h (millirem per hour or mrem/h). It consists of the sum of the dose-equivalent rates from all types of ionizing radiation present including alpha, beta, gamma, and neutron radiation. Neutron flux densities may be used to determine neutron radiation levels according to Table 1:

TABLE 1—NEUTRON FLUENCE RATES TO BE REGARDED AS EQUIVALENT TO A RADIATION LEVEL OF 0.01 MSV/H (1MREM/H) [1]

Energy of neutron	Flux density equivalent to 0.01 mSv/h (1 mrem/h) neutrons per square centimeter per second (n/cm ^{2}/s) [1]
Thermal (2.5 10E–8) MeV	272.0
1 keV	272.0
10 keV	281.0
100 keV	47.0
500 keV	11.0
1 MeV	7.5
5 MeV	6.4
10 MeV	6.7

[1] Flux densities equivalent for energies between those listed in this table may be obtained by linear interpolation.

* * * * *

Uranium—natural, depleted or *enriched* means the following:

(1)(i) ''Natural uranium'' means uranium (which may be chemically separated) containing the naturally occurring distribution of uranium isotopes (approximately 99.28% uranium-238 and 0.72% uranium-235 by mass).

(ii) ''Depleted uranium'' means uranium containing a lesser mass percentage of uranium-235 than in natural uranium.

(iii) ''Enriched uranium'' means uranium containing a greater mass percentage of uranium-235 than 0.72%.

(2) For each of these definitions, a very small mass percentage of uranium-234 may be present.

* * * * *

15. In § 173.410, paragraph (i)(3) is revised to read as follows:

§ 173.410 General design requirements.

* * * * *

(i) * * *

(3) Packages containing liquid contents must be capable of withstanding, without leakage, an internal pressure which produces a pressure differential of not less than the maximum normal operating pressure plus 95 kPa (13.8 psi).

16. Section 173.411 is revised to read as follows:

§ 173.411 Industrial packages.

(a) *General.* Each industrial package must comply with the requirements of this section which specifies package tests, and record retention applicable to Industrial Package Type 1 (Type IP–1), Industrial Package Type 2 (Type IP–2), and Industrial Package Type 3 (Type IP–3).

(b) *Industrial package certification and tests.* (1) Each Type IP–1 package must meet the general design requirements prescribed in § 173.410.

(2) Each Type IP–2 package must meet the general design requirements prescribed in § 173.410 and when subjected to the tests specified in § 173.465(c) and (d) or evaluated against these tests by any of the methods authorized by § 173.461(a), must prevent:

(i) Loss or dispersal of the radioactive contents; and

(ii) More than a 20% increase in the maximum radiation level recorded or calculated at any external surface of the package.

(3) Each Type IP–3 package must meet the requirements for Type IP–1 and Type IP–2 packages, and must meet the requirements specified in § 173.412(a) through (j).

(4) Portable tanks may be used as Type IP–2 or Type IP–3 packages provided that:

(i) They satisfy the requirements for Type IP–1 packages specified in paragraph (b)(1);

(ii) They are designed to satisfy the requirements prescribed in Chapter 6.7 of the United Nations Recommendations on the Transport of Dangerous Goods, (IBR, *see* § 171.7 of this subchapter), ''Requirements for the Design, Construction, Inspection and Testing of Portable Tanks and Multiple-Element Gas Containers (MEGCs),'' or other requirements at least equivalent to those standards;

(iii) They are capable of withstanding a test pressure of 265 kPa (37.1 psig); and

(iv) They are designed so that any additional shielding which is provided must be capable of withstanding the static and dynamic stresses resulting from handling and routine conditions of transport and of preventing more than a 20% increase in the maximum radiation level at any external surface of the portable tanks.

(5) Cargo tanks and tank cars may be used as Type IP–2 or Type IP–3 packages for transporting LSA–I and LSA–II liquids and gases as prescribed in Table 6 of § 173.427, provided that:

(i) They satisfy the requirements for Type IP–1 packages specified in paragraph (b)(1) of this section;

(ii) They are capable of withstanding a test pressure of 265 kPa (37.1 psig); and

(iii) They are designed so that any additional shielding which is provided must be capable of withstanding the static and dynamic stresses resulting from handling and routine conditions of transport and of preventing more than a 20% increase in the maximum radiation level at any external surface of the tanks.

(6) Freight containers may be used as Type IP–2 or Type IP–3 packages provided:

(i) The radioactive contents are restricted to solid materials;

(ii) They satisfy the requirements for Type IP–1 packages specified in paragraph (b)(1) of this section; and

(iii) They are designed to conform to the standards prescribed in the International Organization for Standardization document ISO 1496–1: ''Series 1 Freight Containers—Specifications and Testing—Part 1: General Cargo Containers; excluding dimensions and ratings (IBR, *see* § 171.7 of this subchapter). They must be designed such that if subjected to the tests prescribed in that document and the accelerations occurring during routine conditions of transport they would prevent:

(A) Loss or dispersal of the radioactive contents; and

(B) More than a 20% increase in the maximum radiation level at any external surface of the freight containers.

(7) Metal intermediate bulk containers may be used as Type IP–2 or Type IP–3 packages, provided:

(i) They satisfy the requirements for Type IP–1 packages specified in paragraph (b)(1) of this section; and

(ii) They are designed to satisfy the requirements prescribed in Chapter 6.5 of the United Nations Recommendations on the Transport of Dangerous Goods, (IBR, see § 171.7 of this subchapter), ''Requirements for the Construction and Testing of Intermediate Bulk Containers,'' for Packing Group I or II, and if they were subjected to the tests prescribed in that document, but with the drop test conducted in the most

damaging orientation, they would prevent:

(A) Loss or dispersal of the radioactive contents; and

(B) More than a 20% increase in the maximum radiation level at any external surface of the intermediate bulk container.

(c) Except for Type IP–1 packages, each offeror of an industrial package must maintain on file for at least two years after the offerror's latest shipment, and must provide to the Associate Administrator on request, complete documentation of tests and an engineering evaluation or comparative data showing that the construction methods, package design, and materials of construction comply with that specification.

17. In § 173.412, paragraphs (f), (j)(2), and (k)(3)(ii) are revised to read as follows:

§ 173.412 Additional design requirements for Type A packages.

* * * * *

(f) The containment system will retain its radioactive contents under the reduction of ambient pressure to 60 kPa (8.7 psi).

* * * * *

(j) * * *

(2) More than a 20% increase in the maximum radiation level at any external surface of the package.

(k) * * *

(3) * * *

(ii) Have a containment system composed of primary inner and secondary outer containment components designed to enclose the liquid contents completely and ensure retention of the liquid within the secondary outer component in the event that the primary inner component leaks.

* * * * *

18. In § 173.415, paragraph (a) is revised to read as follows:

§ 173.415 Authorized Type A packages.

(a) DOT Specification 7A (see § 178.350 of this subchapter) Type A general packaging. Each offeror of a Specification 7A package must maintain on file for at least two years after the offerror's latest shipment, and must provide to DOT on request, an engineering drawing and description of the package showing materials of construction, dimensions, weight, closure and closure materials (including gaskets, tape, *etc.*) of each item of the containment system, shielding and packing materials used in normal transportation, and

(1) If the packaging is subjected to the physical tests of § 173.465–§ 173.466, complete documentation of testing, including date, place of test, signature of testers, a detailed description of each test performed including equipment used, and the damage to each item of the containment system resulting from the test, or

(2) For any other demonstration of compliance with tests authorized in § 173.461, a detailed analysis which shows that, for the contents being shipped, the package meets the pertinent design and performance requirements for a DOT 7A Type A specification package.

* * * * *

19. In § 173.416, paragraph (c) is revised to read as follows:

§ 173.416 Authorized Type B packages.

* * * * *

(c) A domestic shipment of a package conducted under a special package authorization granted by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 71.41(d) provided it is offered for transportation in accordance with the requirements in § 173.471(b) and (c).

20. In § 173.417, paragraphs (a)(3) introductory text, (b)(3) introductory text, Table 3 in paragraph (b)(3)(ii), and (c) are revised to read as follows:

§ 173.417 Authorized fissile materials packages.

(a) * * *

(3) DOT Specification 20PF–1, 20PF–2, or 20PF–3 (see § 178.356 of this subchapter) phenolic-foam insulated overpack with snug fittings inner metal cylinders, meeting all requirements of §§ 173.24, 173.410, 173.412, and 173.420 and the following:

* * * * *

(b) * * *

(3) DOT Specifications 20PF–1, 20PF–2, or 20PF–3 (see § 178.356 of this subchapter) phenolic-foam insulated overpack with snug fitting inner metal cylinders, meeting all requirements of §§ 173.24, 173.410, and 173.412, and the following:

* * * * *

(ii) * * *

TABLE 3—AUTHORIZED QUANTITIES OF URANIUM HEXAFLUORIDE

Protective overpack specification number	Maximum inner cylinder diameter		Maximum weight of UF_6 contents		Maximum U–235 enrichment (weight/percent)	Minimum criticality safety index
	Centimeters	Inches	Kilograms	Pounds		
20PF–1	12.7	5	25	55	100.0	0.1
20PF–2	20.3	8	116	255	12.5	0.4
20PF–3	30.5	12	209	460	5.0	1.1

(c) A domestic shipment of a package conducted under a special package authorization granted by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 71.41(d) provided it is offered for transportation in accordance with the requirements in § 173.471(b) and (c).

21. In § 173.420, paragraph (a) is revised and a new paragraph (e) is added to read as follows:

§ 173.420 Uranium hexafluoride (fissile, fissile excepted and non-fissile).

(a) In addition to any other applicable requirements of this subchapter, quantities greater than 0.1 kg of fissile, fissile excepted or non-fissile uranium hexafluoride must be offered for transportation as follows:

(1) Before initial filling and during periodic inspection and test, packagings must be cleaned in accordance with American National Standard N14.1 (IBR, see § 171.7 of this subchapter).

(2) Packagings must be designed, fabricated, inspected, tested and marked in accordance with—

(i) American National Standard N14.1 in effect at the time the packaging was manufactured; or

(ii) Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), provided the packaging—

(A) Was manufactured on or before June 30, 1987;

(B) Conforms to the edition of the ASME Code in effect at the time the packaging was manufactured;

(C) Is used within its original design limitations; and

(D) Has shell and head thicknesses that have not decreased below the minimum value specified in the following table:

Packaging model	Minimum thickness; millimeters (inches)
1S, 2S	1.58 (0.062)
5A, 5B, 8A	3.17 (0.125)
12A, 12B	4.76 (0.187)
30B, 30C	7.93 (0.312)
48A, F, X, and Y	12.70 (0.500)
48T, O, OM, OM Allied, HX, H, and G	6.35 (0.250)

(3) Each package must be designed so that it will:

(i) Withstand a hydraulic test at an internal pressure of at least 1.4 MPa (200 psi) without leakage;

(ii) Withstand the test specified in § 173.465(c) without loss or dispersal of the uranium hexafluoride; and

(iii) Withstand the test specified in 10 CFR 71.73(c)(4) without rupture of the containment system.

(4) Uranium hexafluoride must be in solid form.

(5) The volume of solid uranium hexafluoride, except solid depleted uranium hexafluoride, at 20 °C (68 °F) may not exceed 61% of the certified volumetric capacity of the packaging. The volume of solid depleted uranium hexafluoride at 20 °C (68 °F) may not exceed 62% of the certified volumetric capacity of the packaging.

(6) The pressure in the package at 20 °C (68 °F) must be less than 101.3 kPa (14.8 psig).

* * * * *

(e) The proper shipping name and UN number ''Radioactive material, uranium hexafluoride, UN 2978'' must be used for the transportation of non-fissile or fissile-excepted uranium hexafluoride. The proper shipping name and UN number ''Radioactive material, uranium hexafluoride, fissile, UN 2977'' must be used for the transport of fissile uranium hexafluoride.

22. Section 173.421 is revised to read as follows:

§ 173.421 Excepted packages for limited quantities of Class 7 (radioactive) materials.

A Class 7 (radioactive) material with an activity per package which does not exceed the limited quantity package limits specified in Table 4 in § 173.425, and its packaging, are excepted from requirements in this subchapter for specification packaging, marking (except for the UN identification number marking requirement described in § 173.422(a)), labeling, and if not a hazardous substance or hazardous waste, shipping papers, and the requirements of this subpart if:

(a) Each package meets the general design requirements of § 173.410;

(b) The radiation level at any point on the external surface of the package does not exceed 0.005 mSv/hour (0.5 mrem/hour);

(c) The nonfixed (removable) radioactive surface contamination on the external surface of the package does not exceed the limits specified in § 173.443(a);

(d) The outside of the inner packaging or, if there is no inner packaging, the outside of the packaging itself bears the marking ''Radioactive'';

(e) The package does not contain fissile material unless excepted by § 173.453.

(f) The material is otherwise prepared for shipment as specified in accordance with § 173.422.

23. Section 173.422 is revised to read as follows:

§ 173.422 Additional requirements for excepted packages containing Class 7 (radioactive) materials.

An excepted package of Class 7 (radioactive) material that is prepared for shipment under the provisions of § 173.421, § 173.424, § 173.426, or § 173.428, or a small quantity of another hazard class (as defined in § 173.4) which also meets the requirements of one of these sections, is not subject to any additional requirements of this subchapter, except for the following:

(a) The outside of each package must be marked with the UN identification number for the material preceded by the letters UN, as shown in column (4) of the Hazardous Materials Table in § 172.101, and for materials that meet the definition of a hazardous substance, with the letters ''RQ'';

(b) Sections 171.15 and 171.16 of this subchapter, pertaining to the reporting of incidents;

(c) Sections 174.750, 175.700(b), and 176.710 of this subchapter (depending on the mode of transportation), pertaining to the reporting of decontamination;

(d) The training requirements of subpart H of part 172 of this subchapter; and

(e) For materials that meet the definition of a hazardous substance or a hazardous waste, the shipping paper requirements of subpart C of part 172 of this subchapter, however such shipments are not subject to shipping paper requirements applicable to Class 7 (radioactive) materials in §§ 172.202(a)(6), 172.203(d) and 172.204(c)(4).

24. Section 173.427 is revised to read as follows:

§ 173.427 Transport requirements for low specific activity (LSA) Class 7 (radioactive) materials and surface contaminated objects (SCO).

(a) In addition to other applicable requirements specified in this subchapter, LSA materials and SCO must be transported in accordance with the following conditions:

(1) The external dose rate may not exceed an external radiation level of 10 mSv/h (1 rem/h) at 3 m (10 feet) from the unshielded material;

(2) The quantity of LSA and SCO material transported in any single conveyance may not exceed the limits specified in Table 5;

(3) LSA material and SCO that are or contain fissile material must conform to the applicable requirements of § 173.453;

(4) Packaged and unpackaged Class 7 (radioactive) materials must conform to the contamination control limits specified in § 173.443;

(5) External radiation levels may not exceed those specified in § 173.441; and

(6) For LSA material and SCO consigned as exclusive use:

(i) Shipments must be loaded by the consignor and unloaded by the consignee from the conveyance or freight container in which originally loaded;

(ii) There may be no loose radioactive material in the conveyance; however, when the conveyance is the packaging, there may not be any leakage of radioactive material from the conveyance;

(iii) Packaged and unpackaged Class 7 (radioactive) materials must be braced so as to prevent shifting of lading under conditions normally incident to transportation;

(iv) Specific instructions for maintenance of exclusive use shipment controls shall be provided by the offeror to the carrier. Such instructions must be included with the shipping paper information;

(v) The shipment must be placarded in accordance with subpart F of part 172 of this subchapter;

(vi) For domestic transportation only, packaged and unpackaged Class 7 (radioactive) materials containing less than an A_2 quantity are excepted from the marking and labeling requirements of this subchapter, except for subsidiary hazard labeling as required in 172.402(d). However, the exterior of each package or unpackaged Class 7 (radioactive) material must be stenciled or otherwise marked ''RADIOACTIVE— LSA'' or ''RADIOACTIVE— SCO'', as appropriate, and packages or unpackaged Class 7 (radioactive) materials that contain a hazardous

substance must be stenciled or otherwise marked with the letters ''RQ'' in association with the description in this paragraph (a)(6)(vi); and

(vii) Transportation by aircraft is prohibited except when transported in an industrial package in accordance with Table 6 of this section, or in an authorized Type A or Type B package.

(b) Except as provided in paragraph (c) or (d) of this section, LSA material and SCO must be packaged as follows:

(1) In an industrial package (Type IP–1, Type IP–2 or Type IP–3; § 173.411), subject to the limitations of Table 6;

(2) In a DOT Specification 7A (§ 178.350 of this subchapter) Type A package;

(3) In any Type B(U) or B(M) packaging authorized pursuant to § 173.416;

(4) For domestic transportation of an exclusive use shipment that is less than an A_2 quantity, in a packaging which meets the requirements of §§ 173.24, 173.24a (non-bulk) or 173.24b (bulk) as appropriate, and 173.410.

(5) In portable tanks, cargo tanks and tank cars, as provided in §§ 173.411(b)(4) and (5), respectively.

(c) LSA–I and SCO–I materials may be transported unpackaged under the following conditions:

(1) All unpackaged material, other than ores containing only naturally occurring radionuclides, must be transported in such a manner that under routine conditions of transport there will be no escape of the radioactive contents from the conveyance nor will there be any loss of shielding;

(2) Each conveyance must be under exclusive use, except when only transporting SCO–I on which the contamination on the accessible and the inaccessible surfaces is not greater than 4.0 Bq/cm² for beta and gamma emitters and low toxicity alpha emitters and 0.4 Bq/cm² for all other alpha emitters;

(3) For SCO–I where it is reasonable to suspect that non-fixed contamination may exist on inaccessible surfaces in excess of the values specified in paragraph (c)(2) of this section, measures shall be taken to ensure that the radioactive material is not released into the conveyance or to the environment;

(4) When the unpackaged LSA–I or SCO–I material is contained in receptacles or wrapping materials and is transported under exclusive use, the outer surfaces of the receptacles or wrapping materials must be marked ''RADIOACTIVE LSA–I'' or ''RADIOACTIVE SCO–I'' as appropriate; and

(5) The highway or rail conveyance must be placarded in accordance with subpart F of part 172 of this subchapter.

(d) LSA and SCO that exceed the packaging limits in this section must be packaged in accordance with 10 CFR part 71.

(e) Tables 5 and 6 are as follows:

TABLE 5—CONVEYANCE ACTIVITY LIMITS FOR LSA MATERIAL AND SCO

Nature of material	Activity limit for conveyances other than by inland waterway	Activity limit for hold or compartment of an inland waterway conveyance
1. LSA–I	No limit	No limit.
2. LSA–II and LSA–III; Non-combustible solids	No limit	100 A_2
3. LSA–II and LSA–III; Combustible solids and all liquids and gases	100 A_2	10 A_2
4. SCO	100 A_2	10 A_2

TABLE 6—INDUSTRIAL PACKAGE INTEGRITY REQUIREMENTS FOR LSA MATERIAL AND SCO

Contents	Industrial packaging type	
	Exclusive use shipment	Non exclusive use shipment
1. LSA–I:		
Solid	Type IP–1	Type IP–1
Liquid	Type IP–1	Type IP–2
2. LSA–II:		
Solid	Type IP–2	Type IP–2
Liquid and gas	Type IP–2	Type IP–3
3. LSA–III	Type IP–2	Type IP–3
4. SCO–I	Type IP–1	Type IP–1
5. SCO–II	Type IP–2	Type IP–2

25. In § 173.433, paragraphs (b) introductory text, (c) introductory text, (c)(1), (d)(3) and (h) are revised to read as follows:

§ 173.433 Requirements for determining basic radionuclide values, and for the listing of radionuclides on shipping papers and labels.

* * * * *

(b) For individual radionuclides which are not listed in the tables in § 173.435 or § 173.436 or for which no relevant data are available:

* * * * *

(c) In calculating A_1 and A_2 values for approval in accordance with paragraph (b)(2) of this section:

(1) It is permissible to use an A_2 value calculated using a dose coefficient for the appropriate lung absorption type, as recommended by the International Commission on Radiological Protection, if the chemical forms of each radionuclide under both normal and accident conditions of transport are taken into consideration.

* * * * *

(d) * * *

(3) If the package contains both special and normal form Class 7 (radioactive) material, the activity which may be transported in a Type A package must satisfy:

$$\sum_{i}\frac{B(i)}{A_1(i)}+\sum_{j}\frac{C(j)}{A_2(j)}\leq 1$$

Where:

The symbols are defined as in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

(h) Tables 7 and 8 are as follows:

TABLE 7—GENERAL VALUES FOR A_1 AND A_2

Radioactive contents	A_1		A_2	
	(TBq)	(Ci)	(TBq)	(Ci)
1. Only beta or gamma emitting nuclides are known to be present	1×10^{-1}	2.7×10^{0}	2×10^{-2}	5.4×10^{-1}
2. Alpha emitting nuclides, but no beta, gamma, or neutron emitters, are known to be present [1]	2×10^{-1}	5.4×10^{0}	9×10^{-5}	2.4×10^{-3}
3. Neutron emitting nuclides are known to be present or no relevant data are available	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}

[1] If beta or gamma emitting nuclides are also known to be present, the A_1 value of 0.1 TBq (2.7 Ci) should be used.

TABLE 8—GENERAL EXEMPTION VALUES

Radioactive contents	Activity concentration for exempt material		Activity limits for exempt consignments	
	(Bq/g)	(Ci/g)	(Bq)	(Ci)
1. Only beta or gamma emitting nuclides are known to be present	1×10^{1}	2.7×10^{-10}	1×10^{4}	2.7×10^{-7}
2. Alpha emitting nuclides, but no neutron emitters, are known to be present	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}
3. Neutron emitting nuclides are known to be present or no relevant data are available	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}

26. In the table in § 173.435, Kr-79 is added in alphanumeric order, and the entries for Cf-252, Ir-192, Kr-81 and Mo-99 are revised, footnotes (a) and (c) are revised, footnote (h) is removed and footnote (i) is redesignated as paragraph (h), to read as follows:

§ 173.435 Table of A_1 and A_2 values for radionuclides.

The table of A_1 and A_2 values for radionuclides is as follows:

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci) [b]	A_2 (TBq)	A_2 (Ci) [b]	Specific activity	
						(TBq/g)	(Ci/g)
*	* *	*	*	*	*		*
Cf-252		1×10^{-1}	2.7	3.0×10^{-3}	8.1×10^{-2}	2.0×10^{1}	5.4×10^{2}
*	* *	*	*	*	*		*
Ir-192		[c]1.0	[c]2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.4×10^{2}	9.2×10^{3}
*	* *	*	*	*	*		*
Kr-79	Krypton (36)	4.0×10^{0}	1.1×10^{2}	2.0×10^{0}	5.4×10^{1}	4.2×10^{4}	1.1×10^{6}
Kr-81		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	7.8×10^{-4}	2.1×10^{-2}
*	* *	*	*	*	*		*
Mo-99(a)(h)		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.8×10^{4}	4.8×10^{5}
*	* *	*	*	*	*		*

[a] A_1 and/or A_2 values for these parent radionuclides include contributions from daughter nuclides with half-lives less than 10 days as listed in footnote (a) to Table 2 in the ''IAEA Regulations for the Safe Transport of Radioactive Material, No. TS–R–1'' (IBR, see § 171.7 of this subchapter).

[b] The values of A_1 and A_2 in curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (see § 171.10).

[c] The activity of Ir-192 in special form may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.

[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.

[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.

[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.

[g] These values apply to unirradiated uranium only.

[h] A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

27. In § 173.436, add new entry r Kr-79, and revise entries Kr-81, Te-121m, and footnote (b) to read as follows:

§ 173.436 Exempt material activity concentrations and exempt consignment activity limits for radionuclides.

The table of exempt material activity concentrations and exempt consignment activity limits for radionuclides is as follows:

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
* *	* *	*	*		*
Kr-79	Krypton (36)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Kr-81		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
* *	* *	*	*		*
Te-121m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
* *	* *	*	*		*

* * * * *

[b] Parent nuclides and their progeny included in secular equilibrium are listed as follows:
Sr-90 Y-90
Zr-93 Nb-93m
Zr-97 Nb-97
Ru-106 Rh-106
Ag-108m Ag-108
Cs-137 Ba-137m
Ce-144 Pr-144
Ba-140 La-140
Bi-212 Tl-208 (0.36), Po-212 (0.64)
Pb-210 Bi-210, Po-210
Pb-212 Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-222 Po-218, Pb-214, Bi-214, Po-214
Ra-223 Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224 Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64),
Ra-226 Rn-222, Po-218, Pb-214, Bi-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228 Ac-228
Th-228 Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-229 Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234 Pa-234m
U–230 Th-226, Ra-222, Rn-218, Po-214
U–232 Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U–235 Th-231
U–238 Th-234, Pa-234m
U-nat Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Np-237 Pa-233
Am-242m Am-242
Am-243 Np-239

* * * * *

28. Section 173.443 is revised to read as follows:

§ 173.443 Contamination Control.

(a) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package as well as the external and internal surfaces of conveyances, overpacks, freight containers, tanks, and intermediate bulk containers offered for transport must be kept as low as reasonably achievable.

(1) Excluding the internal surfaces of a conveyance, freight container, tank, or intermediate bulk container dedicated to the transport of unpackaged radioactive material in accordance with § 173.427(c) and remaining under that specific exclusive use, the level of non-fixed radioactive contamination may not exceed the limits set forth in Table 9 and must be determined by either:

(i) Wiping an area of 300 cm^2 of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the non-fixed contamination levels. The amount of radioactivity measured on any single wiping material, divided by the surface area wiped and divided by the efficiency of the wipe procedure (the fraction of removable contamination transferred from the surface to the absorbent material), may not exceed the limits set forth in Table 9 at any time during transport. For this purpose the actual wipe efficiency may be used, or the wipe efficiency may be assumed to be 0.10; or

(ii) Alternatively, the level of non-fixed radioactive contamination may be determined by using other methods of equal or greater efficiency.

(2) A conveyance used for non-exclusive use shipments is not required to be surveyed unless there is reason to suspect that it may exhibit contamination.

TABLE 9—NON-FIXED EXTERNAL RADIOACTIVE CONTAMINATION LIMITS FOR PACKAGES

Contaminant	Maximum permissible limits		
	Bq/cm²	uCi/cm²	dpm/cm²
1. Beta and gamma emitters and low toxicity alpha emitters	4	10^{-4}	240
2. All other alpha emitting radionuclides	0.4	10^{-5}	24

(b) In the case of packages transported as exclusive use shipments by rail or public highway only, except as provided in paragraph (d) of this section, the removable (non-fixed) radioactive contamination on the external surface of any package, as well as on the associated accessible internal surfaces of any conveyance, overpack, freight container, tank, or intermediate bulk container, at any time during transport, may not exceed ten times the levels prescribed in paragraph (a) of this section. The levels at the beginning of transport may not exceed the levels prescribed in paragraph (a) of this section.

(c) Except as provided in paragraphs (a) and (d) of this section, each conveyance, overpack, freight container, tank, or intermediate bulk container used for transporting Class 7 (radioactive) materials as an exclusive use shipment that utilizes the provisions of paragraph (b) of this section, § 173.427(b)(4), or § 173.427(c) must be surveyed with appropriate radiation detection instruments after each exclusive use transport. Except as provided in paragraphs (a) and (d) of this section, these items may not be returned to Class 7 (radioactive) materials exclusive use transport service, and then only for a subsequent exclusive use shipment utilizing one of the above cited provisions, unless the radiation dose rate at each accessible surface is 0.005 mSv per hour (0.5 mrem per hour) or less, and there is no significant removable (non-fixed) radioactive surface contamination as specified in paragraph (a) of this section. The requirements of this paragraph do not address return to service of items outside of the above cited provisions.

(d) Paragraphs (b) and (c) of this section do not apply to any closed transport vehicle used solely for the exclusive use transportation by highway or rail of Class 7 (radioactive) material with contamination levels that do not exceed ten times the levels prescribed in paragraph (a) of this section if—

(1) A survey of the interior surfaces of the empty vehicle shows that the radiation dose rate at any point does not exceed 0.1 mSv per hour (10 mrem per hour) at the surface or 0.02 mSv per hour (2 mrem per hour) at 1 m (3.3 feet) from the surface;

(2) Each vehicle is stenciled with the words ''For Radioactive Materials Use Only'' in letters at least 76 millimeters (3 inches) high in a conspicuous place on both sides of the exterior of the vehicle; and

(3) Each vehicle is kept closed except for loading or unloading; and

(4) Each vehicle is placarded in accordance with subpart F of part 172 of this subchapter.

(e) If it is evident that a package of radioactive material, or conveyance carrying unpackaged radioactive material, is leaking, or if it is suspected that the package, or conveyance carrying unpackaged material, may have leaked, access to the package or conveyance must be restricted and, as soon as possible, the extent of contamination and the resultant radiation level of the package or conveyance must be assessed. The scope of the assessment must include the package, the conveyance, the adjacent loading and unloading areas, and, if necessary, all other material which has been carried in the conveyance. When necessary, additional steps for the protection of persons, property, and the environment must be taken to overcome and minimize the consequences of such leakage. Packages, and conveyances carrying unpackaged material, which are leaking radioactive contents in excess of limits for normal conditions of transport may be removed to an interim location under supervision, but must not be forwarded until repaired or reconditioned and decontaminated, or as approved by the Associate Administrator for Hazardous Material Safety.

29. In § 173.453, paragraph (d) is revised to read as follows:

§ 173.453 Fissile materials—exceptions.

* * * * *

(d) Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the material is essentially homogeneous, and the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass.

* * * * *

30. In § 173.465, paragraphs (a) and (d)(1) are revised to read as follows:

§ 173.465 Type A packaging tests.

(a) The packaging, with contents, must be capable of withstanding the water spray, free drop, stacking and penetration tests prescribed in this section. One prototype may be used for all tests if the requirements of paragraph (b) of this section are met. The tests are judged to be successful if the requirements of § 173.412(j) are met.

* * * * *

(d) * * *

(1) The specimen must be subjected for a period of at least 24 hours to a compressive load equivalent to the greater of the following:

(i) A total weight equal to five times the maximum weight of the package; or

(ii) The equivalent of 13 kilopascals (1.9 psi) multiplied by the vertically projected area of the package.

* * * * *

31. In § 173.466, paragraph (a) introductory text is revised to read as follows:

§ 173.466 Additional tests for Type A packagings designed for liquids and gases.

(a) In addition to the tests prescribed in § 173.465, Type A packagings designed for liquids and gases must be capable of withstanding the following tests in this section. The tests are judged to be successful if the requirements of § 173.412(k) are met.

* * * * *

32. In § 173.469, revise paragraphs (b)(2)(ii), (b)(2)(iii), (d)(1) and (d)(2), and add paragraph (e) to read as follows:

§ 173.469 Tests for special form Class 7 (radioactive) materials.

* * * * *

(b) * * *

(2) * * *

(ii) The flat face of the billet must be 2.5 cm (1 inch) in diameter with the edge rounded off to a radius of 3 mm ± 0.3 mm (0.12 inch ± 0.012 inch).

(iii) The lead must be of hardness number 3.5 to 4.5 on the Vickers scale and thickness not more than 2.5 cm (1

inch), and must cover an area greater than that covered by the specimen.

* * * * *

(d) * * *

(1) The impact test and the percussion test of this section provided that the mass of the special form material is—

(i) less than 200 g and it is alternatively subjected to the Class 4 impact test prescribed in ISO 2919, ''Radiation Protection—Sealed radioactive sources—General requirements and classification'' (IBR, see § 171.7 of this subchapter), or

(ii) less than 500 g and it is alternatively subjected to the Class 5 impact test prescribed in ISO 2919, ''Radiation Protection—Sealed radioactive sources—General requirements and classification'' (IBR, see § 171.7 of this subchapter); and

(2) The heat test of this section, provided the specimen is alternatively subjected to the Class 6 temperature test specified in the International Organization for Standardization document ISO 2919, ''Radiation Protection—Sealed radioactive sources—General requirements and classification'' (IBR, see § 171.7 of this subchapter).

(e) Special form materials that were successfully tested prior to [EFFECTIVE DATE OF FINAL RULE] in accordance with the requirements of paragraph (d) of this section in effect prior to [EFFECTIVE DATE OF FINAL RULE] may continue to be offered for transportation and transported without additional testing under this section.

33. In § 173.473, paragraph (a)(1) is revised to read as follows:

§ 173.473 Requirements for foreign-made packages.

* * * * *

(a) * * *

(1) Have the foreign competent authority certificate revalidated by the U.S. Competent Authority, unless this has been done previously. Each request for revalidation must be in triplicate, contain all the information required by Section VIII of the IAEA regulations in ''IAEA Regulations for the Safe Transport of Radioactive Material, No. TS–R–1'' (IBR, see § 171.7 of this subchapter), and include a copy in English of the foreign competent authority certificate. The request and accompanying documentation must be sent to the Associate Administrator for Hazardous Materials Safety (PHH–23), Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington DC 20590–0001. Alternatively, the request with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to (202) 366–3753 or (202) 366–3650, or by electronic mail to *ramcert@dot.gov.* Each request is considered in the order in which it is received.

* * * * *

34. In § 173.476, paragraphs (a) and (d) are revised to read as follows:

§ 173.476 Approval of special form Class 7 (radioactive) materials.

(a) Each offeror of special form Class 7 (radioactive) materials must maintain on file for at least two years after the offerror's latest shipment, and provide to the Associate Administrator on request, a complete safety analysis, including documentation of any tests, demonstrating that the special form material meets the requirements of § 173.469. An IAEA Certificate of Competent Authority issued for the special form material may be used to satisfy this requirement.

* * * * *

(d) Paragraphs (a) and (b) of this section do not apply in those cases where A_1 equals A_2 and the material is not required to be described on the shipping papers as ''Radioactive material, Type A package, special form'' or ''Radioactive material, Type A package, special form, fissile.''

35. In § 173.477, paragraph (a) is revised to read as follows:

§ 173.477 Approval of packagings containing greater than 0.1 kg of non-fissile or fissile-excepted uranium hexafluoride.

(a) Each offeror of a package containing more than 0.1 kg of uranium hexafluoride must maintain on file for at least two years after the offerror's latest shipment, and provide to the Associate Administrator on request, a complete safety analysis, including documentation of any tests, demonstrating that the package meets the requirements of 173.420. An IAEA Certificate of Competent Authority issued for the design of the packaging containing greater than 0.1 kg of non-fissile or fissile-exempted uranium hexafluoride may be used to satisfy this requirement.

* * * * *

PART 174—CARRIAGE BY RAIL

36. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

§ 174.700(e) [Removed and reserved]

37. In § 174.700, paragraph (e) is removed and reserved.

38. In § 174.715, paragraph (a) is revised to read as follows:

§ 174.715 Cleanliness of transport vehicles after use.

(a) Each transport vehicle used for transporting Class 7 (radioactive) materials under exclusive use conditions (as defined in § 173.403 of this subchapter) in accordance with § 173.427(b)(4), § 173.427(c), or § 173.443(b), must be surveyed with appropriate radiation detection instruments after each use. A transport vehicle may not be returned to Class 7 (radioactive) materials exclusive use transport service, and then only for a subsequent exclusive use shipment utilizing the provisions of any of the paragraphs § 173.427(b)(4), § 173.427(c), or § 173.443(b), until the radiation dose rate at any accessible surface is 0.005 mSv per hour (0.5 mrem per hour) or less, and there is no significant removable radioactive surface contamination, as specified in § 173.443(a) of this subchapter.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

39. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

40. In § 175.702, paragraph (b) is revised and paragraph (c) is removed to read as follows:

§ 175.702 Separation distance requirements for packages containing Class 7 (radioactive) materials in cargo aircraft.

* * * * *

(b) In addition to the limits on combined criticality safety indexes stated in § 175.700(b) of this subchapter,

(1) The criticality safety index of any single group of packages must not exceed 50.0 (as used in this section, the term ''group of packages'' means packages that are separated from each other in an aircraft by a distance of 6 m (20 feet) or less); and

(2) Each group of packages must be separated from every other group in the aircraft by not less than 6 m (20 feet), measured from the outer surface of each group.

41. In § 175.705, paragraph (c) is revised to read as follows:

§ 175.705 Radioactive Contamination.

* * * * *

(c) An aircraft in which Class 7 (radioactive) material has been released must be taken out of service and may not be returned to service or routinely occupied until the aircraft is checked for radioactive substances and it is determined that any radioactive substances present do not meet the

definition of radioactive material, as defined in § 173.403 of this subchapter.

* * * * *

PART 176—CARRIAGE BY VESSEL

42. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

43. Section 176.715 is revised to read as follows:

§ 176.715 Contamination control.

Each hold, compartment, or deck area used for transporting Class 7 (radioactive) materials under exclusive use conditions in accordance with § 173.427(b)(4), or § 173.427(c) must be surveyed with appropriate radiation detection instruments after each use. Such holds, compartments, and deck areas may not be used again for Class 7 (radioactive) materials exclusive use transport service, and then only for a subsequent exclusive use shipment utilizing the provisions of § 173.427(b)(4), or § 173.427(c) until the radiation dose rate at every accessible surface is less than 0.005 mSv/h(0.5 mrem/h), and the removable (non-fixed) radioactive surface contamination is not greater than the limits prescribed in § 173.443(a) of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

44. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

45. In § 177.843, paragraph (a) is revised to read as follows:

§ 177.843 Contamination of vehicles.

(a) Each motor vehicle used for transporting Class 7 (radioactive) materials under exclusive use conditions in accordance with § 173.427(b)(4), § 173.427(c), or § 173.443(b) of this subchapter must be surveyed with radiation detection instruments after each use. A vehicle may not be returned to Class 7 (radioactive) materials exclusive use transport service, and then only for a subsequent exclusive use shipment utilizing the provisions of any of the paragraphs § 173.427(b)(4), § 173.427(c), or § 173.443(b), until the radiation dose rate at every accessible surface is 0.005 mSv/h (0.5 mrem/h) or less and the removable (non-fixed) radioactive surface contamination is not greater than the level prescribed in § 173.443(a) of this subchapter.

* * * * *

PART 178 — SPECIFICATIONS FOR PACKAGINGS

46. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

47. In § 178.350, paragraph (c) is revised to read as follows:

§ 178.350 Specification 7A; general packaging, Type A.

* * * * *

(c) Each Specification 7A packaging must comply with the requirements of §§ 178.2 and 178.3. In § 178.3(a)(2) the term ''packaging manufacturer'' means the person certifying that the package meets all requirements of this section.

§§ 178.358 through 178.358–6 [Removed and reserved]

48. Remove and reserve §§ 178.358 through 178.358–6.

§§ 178.360 through 178.360–4 [Removed and reserved]

49. Remove and reserve §§ 178.360 through 178.360–4.

Issued in Washington, DC on August 1, 2011 under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2011–19872 Filed 8–11–11; 8:45 am]

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 228

Hours of Service of Railroad Employees; Substantive Regulations for Train Employees Providing Commuter and Intercity Rail Passenger Transportation; Conforming Amendments to Recordkeeping Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

[Docket No. FRA–2009–0043, Notice No. 2]

RIN 2130–AC15

Hours of Service of Railroad Employees; Substantive Regulations for Train Employees Providing Commuter and Intercity Rail Passenger Transportation; Conforming Amendments to Recordkeeping Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its hours of service recordkeeping regulations, to add substantive hours of service regulations, including maximum on-duty periods, minimum off-duty periods, and other limitations, for train employees (*e.g.,* locomotive engineers and conductors) providing commuter and intercity rail passenger transportation. The new substantive regulations require that railroads employing such train employees analyze and mitigate the risks for fatigue in the schedules worked by these train employees, and that the railroads submit to FRA for its approval the relevant schedules and fatigue mitigation plans. This final rule also makes corresponding changes to FRA's hours of service recordkeeping regulation, to require railroads to keep hours of service records and report excess service to FRA in a manner consistent with the new substantive requirements. This regulation is authorized by the Rail Safety Improvement Act of 2008.

DATES: *Effective Date:* This final rule is effective October 15, 2011. Petitions for reconsideration must be received on or before October 5, 2011.

ADDRESSES: *Petitions for reconsideration:* Any petitions for reconsideration related to Docket No. FRA–2009–0043, Notice No. 2, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all petitions received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark H. McKeon, Special Assistant to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue, SE., RRS–1, Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6350); Dr. Thomas G. Raslear, Staff Director, Human Factors Research Program, Office of Research and Development, FRA, 1200 New Jersey Avenue, SE., RPD–321, Mail Stop 20, Washington, DC 20590 (telephone 202–493–6356); Colleen A. Brennan, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6028 or 202–493–6052); or Matthew T. Prince, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6146 or 202–493–6052).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary

Having considered public comments in response to FRA's March 22, 2011 proposed rule in this rulemaking (76 FR 16200), FRA issues this final rule establishing substantive hours of service regulations for train employees who provide commuter or intercity rail passenger transportation (passenger train employees).

Federal laws governing railroad employees' hours of service date back to 1907 with the enactment of the Hours of Service Act (Pub. L. 59–274, 34 Stat. 1415), and FRA, under delegations from the Secretary of Transportation (Secretary), has long administered statutory hours of service requirements for the three groups of employees now covered under the statute, namely employees performing the functions of train employees, signal employees, and dispatching service employees, as those terms are defined at 49 U.S.C. 21101. See 49 CFR 1.49; 49 U.S.C. 21101–21109, 21303.

These requirements have been amended several times over the years, most recently in the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A) (RSIA). The RSIA substantially amended the requirements of 49 U.S.C. 21103, applicable to train employees, defined as ''individual[s] engaged in or connected with the movement of a train, including a hostler.'' 49 U.S.C. 21101(5). However, the RSIA also granted the Secretary

authority to prescribe regulations governing the hours of service of passenger train employees. 49 U.S.C. 21109(b)–(c). As will be discussed below, FRA interprets commuter or intercity rail passenger transportation to include rail passenger transportation by tourist, scenic, excursion, and historic railroads. The RSIA provided that this particular subset of train employees (*i.e.,* passenger train employees) would continue to be governed by 49 U.S.C. 21103 as it existed prior to the enactment of the RSIA (old Section 21103), until the earlier of, the effective date of final regulations prescribed by the Secretary, or the date that is three years from the date of enactment of the RSIA. 49 U.S.C. 21102(c). In the absence of a final rule in effect governing this group of train employees, the requirements of the RSIA currently in effect for other train employees (new Section 21103) would go into effect for passenger train employees on October 16, 2011. 49 U.S.C. 21102(c).

As will be discussed further below, FRA reviewed the applicable fatigue science, and sought input from FRA's Railroad Safety Advisory Committee (RSAC). Based on FRA's understanding of current fatigue science, and information received through RSAC, FRA determined that the requirements imposed on train employees by the RSIA were not appropriate for passenger train employees. The chart below compares and contrasts (1) the hours of service requirements in 49 U.S.C. 21103 as amended by the RSIA, (2) the statutory hours of service requirements applicable to all train employees immediately prior to the RSIA, which are currently still applicable to passenger train employees until the effective date of this final rule, and (3) the requirements of this final rule that applies to passenger train employees from the effective date of the rule, with the compliance date of some provisions delayed for a period of 180 or 545 days from the effective date.

	Freight train employee statute	Train employee statutory provisions immediately prior to the RSIA and currently applicable only to passenger train employees	FRA passenger train employee final rule
Citation	49 U.S.C. 21103 (as amended by the RSIA effective July 16, 2009) (new section 21103) (Applies to train employees on freight railroads. Will apply to train employees on commuter and intercity passenger railroads if no regulations are in effect by October 16, 2011).	49 U.S.C. 21103 as it existed prior to the October 16, 2008, enactment of the RSIA (old section 21103) (Train employees providing commuter and intercity rail passenger transportation are currently covered by these provisions pursuant to 49 U.S.C. 21102(c).).	49 CFR part 228, subpart F.
Use of Fatigue Science	None	None	This final rule requires passenger train employees' work schedules to be analyzed under an FRA-approved validated biomathematical fatigue model such as the specified version of the Fatigue Avoidance Scheduling Tool™ or Fatigue Audit InterDyne™, with the exception of certain schedules (completely within the hours of 4 a.m. and 8 p.m., or nested within other schedules that have been previously modeled and shown to present an acceptable level of risk for fatigue, and otherwise in compliance with the limitations in the regulation) deemed as categorically presenting an acceptable level of risk for fatigue that does not violate the defined fatigue threshold. Analysis must be complete 180 days from the effective date of the final rule, except that tourist, scenic, historic and excursion railroads have 545 days from the effective date of the final rule to complete their analysis.
Limitations on Time on Duty in a Single Tour.	12 consecutive hours of time on duty or 12 nonconsecutive hours on duty if broken by an interim release of at least 4 consecutive hours uninterrupted by communication from the railroad likely to disturb rest, in a 24-hour period that begins at the beginning of the duty tour.	12 consecutive hours of time on duty or 12 nonconsecutive hours on duty if broken by an interim release of at least 4 consecutive hours, in a 24-hour period that begins at the beginning of the duty tour.	12 consecutive hours of time on duty or 12 nonconsecutive hours on duty if broken by an interim release of at least 4 consecutive hours, in a 24-hour period that begins at the beginning of the duty tour. This is effective on the effective date of the final rule.

	Freight train employee statute	Train employee statutory provisions immediately prior to the RSIA and currently applicable only to passenger train employees	FRA passenger train employee final rule
Limitations on Consecutive Duty Tours or Total Duty Tours in Set Period.	May not be on duty as a train employee after initiating an on-duty period on six consecutive days without receiving 48 consecutive hours off duty free from any service for any railroad carrier at the employee's home terminal. Employees are permitted to initiate a seventh consecutive day when the employee ends the sixth consecutive day at the away-from-home terminal, as part of a pilot project, or as part of a grandfathered collectively bargained arrangement. Employees performing service on this additional day must receive 72 consecutive hours free from any service for any railroad carrier at their home terminal before going on duty again as a train employee.	None	If employee initiates an on-duty period each day for six consecutive calendar days including at least one ''Type 2'' assignment (generally, those including time on duty between 8 p.m. and 4 a.m.) employee must have 24 consecutive hours off duty at the employee's home terminal. If an employee initiates an on-duty period on 13 or more calendar days of a period of 14 consecutive days then must have 2 consecutive calendar days without initiating an on-duty period at the employee's home terminal. Employees may be permitted to perform service on an additional day to facilitate their return to their home terminal. These limitations are effective 180 days from the effective date of the final rule, except that they become effective for tourist, scenic, historic and excursion railroads 545 days from the effective date of the final rule.
Cumulative Limits on Time on Duty	Limited to 276 hours of time on duty, in deadhead transportation to a point of final release, or any other mandatory activity for the railroad carrier. Limited to 30 hours of time spent on duty and waiting for or in deadhead transportation to a point of final release after reaching 12 hours of time on duty and waiting for or in deadhead transportation to a point of final release.	None	None.
Mandatory Off-Duty Periods	10 consecutive hours of time off duty free from any communication from the railroad likely to disturb rest, with additional time off duty if on-duty time plus time in or awaiting deadhead transportation to final release exceeds 12 hours. 48 consecutive hours off duty, free from any service for any railroad carrier, after initiating an on-duty period for 6 consecutive days. If 7 consecutive days are permitted, mandatory off-duty period extended to 72 consecutive hours.	8 consecutive hours (10 consecutive hours if time on duty reaches 12 consecutive hours).	8 consecutive hours (10 consecutive hours if time on duty reaches 12 consecutive hours). This is effective on the effective date of the final rule.

	Freight train employee statute	Train employee statutory provisions immediately prior to the RSIA and currently applicable only to passenger train employees	FRA passenger train employee final rule
Specific Rules for Nighttime Operations.	None	None	Schedules that include any time on duty between 8 p.m. and 4 a.m. must be analyzed using a validated biomathematical model of human performance and fatigue approved by FRA. Schedules with excess risk of fatigue must be mitigated or supported by a determination that mitigation is not possible and the schedule is operationally necessary and approved by FRA. Analysis must be complete and required submissions must be made 180 days from the effective date of the final rule, except that tourist, scenic, historic and excursion railroads have 545 days from the effective date of the final rule to complete their analysis and any required submission.
Specific Rules for Unscheduled Assignments.	None	None	The potential for fatigue presented by unscheduled work assignments must be mitigated as part of a railroad's FRA-approved fatigue mitigation plan. Plans must be submitted for FRA review and approval along with the associated schedules requiring mitigation, 180 days from the effective date of the final rule, except that tourist, scenic, historic and excursion railroads have 545 days from the effective date of the final rule to complete their analysis and any required submission.
Recordkeeping requirements	Record for each duty tour must contain 15 elements specified in 49 CFR 228.11(b).	Record for each duty tour must contain the first 12 elements specified in 49 CFR 228.11(b), as items 13 through 16 relate to RSIA requirements not applicable to train employees providing commuter or intercity rail passenger transportation.	Record for each duty tour must contain the first 12 elements specified in 49 CFR 228.11(b). Record must also indicate the date on which the series of at most 14 consecutive calendar days begins, as well as the date of any calendar day on which the employee did not initiate an on-duty period during the series. These recordkeeping requirements go into effect at the same time as the substantive provisions being tracked by them, which is 180 days from the effective date of the final rule, except that those provisions go into effect for tourist, scenic, historic and excursion railroads 545 days from the effective date of the final rule, as would the associated recordkeeping requirements.

	Freight train employee statute	Train employee statutory provisions immediately prior to the RSIA and currently applicable only to passenger train employees	FRA passenger train employee final rule
Excess Service Reporting Requirements.	Requires reporting of any of 10 different ways in which hours of service limitations may be exceeded.	Requires reporting of any of 4 different ways in which hours of service limitations may be exceeded.	Requires reporting of any of 8 different ways in which hours of service limitations may be exceeded (reflecting various ways of violating new consecutive-days requirements). These recordkeeping requirements go into effect at the same time as the substantive provisions being tracked by them, which is 180 days from the effective date of the final rule, except that those provisions go into effect for tourist, scenic, historic and excursion railroads 545 days from the effective date of the final rule, as would the associated recordkeeping requirements.

This rule mirrors the existing limitations set by old section 21103 on the maximum number of hours in a duty tour and minimum number of hours in a statutory off-duty period. Additional limitations are added on the number of consecutive days or total days within a prescribed period that a passenger train employee may work, depending on the time of day of the assignment. This differentiation takes into account the fact that work during nighttime hours may present a greater risk for fatigue. (For ease of reference, these provisions of this regulation are collectively referred to as ''consecutive-days limitations''). Conforming changes are also made to the recordkeeping and reporting requirements to accommodate the consecutive-days limitations.

The limitations on maximum hours worked, minimum hours of rest, and consecutive days or total days within a prescribed period provide a ''floor,'' a minimum set of limitations, within which the rule requires railroads subject to this rule to analyze the work schedules of their passenger train employees using a validated and calibrated biomathematical model of human performance and fatigue, and to mitigate any fatigue identified that violates the fatigue threshold for the model.[1] The fatigue threshold is a level of fatigue at which safety may be compromised. As will be discussed below, especially under Section III.A, there are two models that currently have been validated and calibrated using data from freight railroads, that have been approved by FRA to be used for the analysis required by this rule. The rule also allows for the development of new models. It discusses procedures for validating and calibrating a model, and provides that evidence of a new model's validation and calibration may be submitted to FRA for approval.

The rule defines as a ''Type 1 assignment'' any assignment that requires an employee to report for duty no earlier than 4 a.m. and be released from duty no later than 8 p.m. Based on analysis conducted during the formulation of this rule, such assignments are subjected to a less restrictive consecutive-days limitation, and such schedules are deemed to present an acceptable level of fatigue when otherwise in compliance with the limitations established in this rule. Thus, these schedules are not required to be submitted to FRA for approval, nor is the application of fatigue mitigation tools to these schedules required.

A ''Type 2 assignment'' is any assignment having any period of time during a calendar day before 4 a.m. or after 8 p.m. Within 180 days of the effective date of this regulation, railroads are required to analyze the fatigue risk of assignments that they make to their passenger train employees using an FRA-approved fatigue model. If the analysis shows that a schedule does not violate the fatigue threshold, and the schedule is otherwise in compliance with the limitations of the rule and does not require the employee to be on duty for any period of time between midnight and 4 a.m., the rule allows that schedule to be treated as a Type 1 assignment for the purposes of the consecutive-days limitation, and there is no requirement to submit the schedule to FRA or to mitigate fatigue in that schedule. However, for those schedules that the analysis indicates have a level of risk for fatigue violating the fatigue threshold, the railroad is required to mitigate the fatigue. Railroads are also required to complete their analysis and submit any schedules with a risk violating the fatigue threshold, and the mitigation tools the railroad applied to mitigate the fatigue risk in those schedules to FRA for approval. In addition, any schedule, the fatigue risk of which could not be sufficiently mitigated so that it no longer violates the fatigue threshold, but which the railroad deems operationally necessary, must also be submitted for FRA approval, along with a declaration of operational necessity for FRA approval.

The rule also requires railroads to submit any schedule changes that result in a schedule that would have been required to be submitted if it were an original schedule, unless the new schedule is the same as another schedule that has previously been analyzed and approved.

Within 120 days of any railroad submission, FRA will notify the railroad of any exceptions taken to its submission and the time frame within which the railroad must correct the exceptions. While the rule requires FRA approval of the schedules and fatigue mitigation tools, FRA expects that it will work with a railroad to make necessary modifications to schedules or mitigation tools to minimize fatigue to the greatest extent possible.

[1] In the NPRM, FRA referred to ''exceeding'' the fatigue threshold. The two currently approved models differ in how their thresholds are expressed, with FAST requiring an effectiveness score greater than or equal to its threshold, and FAID requiring a score less than or equal to its threshold, so FRA realized there could be confusion as to what it meant to ''exceed'' the threshold depending which model is being used, while it is equally applicable to say the threshold is violated, however that threshold is expressed.

Railroads are required to consult with affected employees and applicable labor organizations regarding the analysis of work schedules, fatigue mitigation tools, and submissions to FRA. Should the employees or labor organizations disagree with the railroad, they have the opportunity to file a statement for FRA's consideration in reviewing the submission and determining whether to approve it.

Finally, the rule requires initial fatigue training, addressing a list of subjects, and refresher training every three years. This training may be combined with other training that the railroads are providing to their employees.

FRA analyzed the economic impacts of this rule against two baselines. One is a ''status quo'' baseline that reflects present conditions (*i.e.,* primarily, the statutory hours of service provisions (specifically, old section 21103) and, secondarily, the hours of service recordkeeping and reporting regulations) that have applied, and will continue to apply to passenger railroads, with respect to their train employees, until this final rule becomes effective. The other baseline is a ''no regulatory action'' baseline that reflects what would have happened in the absence of this rulemaking (*i.e.,* the freight hours of service laws would have been applied to passenger railroads with respect to their train employees).

With respect to the ''no regulatory action'' baseline, this rule represents a substantially more cost-effective alternative for achieving the goal of identifying and mitigating unacceptable fatigue risk levels and thus ensuring the safety of passenger train operations. The following table presents the costs of the final rule compared to the ''no regulatory action'' alternative.

Cost description	No regulatory action alternative—freight HSL			Final rule		
	Undiscounted	PV@7%	PV@3%	Undiscounted	PV@7%	PV@3%
New Engineer Training, Initial (20% New Hires).	$31,237,549	$26,299,825	$28,705,081	0	0	0.
New Engineer Training, Refresher (20% New Hires).	$4,599,050	$2,278,431	$3,327,802	0	0	0.
New Conductor Training, Initial (20% New Hires).	$30,847,974	$25,942,971	$28,330,908	0	0	0.
New Conductor Training, Refresher (20% New Hires).	$8,636,745	$4,278,146	$6,249,071	0	0	0.
Work Schedule Analysis (No-Reg Action)/Initial Analysis of Work Schedules + Follow-up Analysis and Fatigue Mitigation Plan Review (FRA rule).	$189,723	$177,312	$184,198	($126,482 + $240,316) = $366,799.	($118,208 + $122,175) = $240,382.	($122,798 + $175,894) = $298,692.
Indirect Determination that Type 2 Schedules are Acceptable (''Nested'' Schedules Reduction).				−$91,700	−$60,096	−$74,673.
Biomathematical Model of Fatigue Software (Training on model use).	0	0	0	$417,500 (includes $192,500 for training on model use).	$268,723 (includes $119,175 for training on model use).	$337,240 (includes $152,843 for training on model use).
Use of Rest Facilities	0	0	0	$30,988	$28,961	$30,086.
Fatigue Training	0	0	0	$1,312,920	$782,634	$1,025,158.
Fatigue Training (Tourist & Excursion)	0	0	0	$20,000	$12,000	$16,000.
Total (rounded)	$75,511,041	$58,976,685	$66,797,059	$2,056,507	$1,272,605	$1,632,502.

FRA estimates that the recordkeeping and reporting costs per employee record under the no-regulatory action alternative and this rule will be practically the same.

The estimated accident reduction benefits of the rule relative to the statutory hours of service requirements currently in place include prevented accident damages, injuries, and fatalities. The table below presents the estimates for the 20-year period of analysis for the benefits of this rule, which FRA estimates to be the same as the benefits of the no-regulatory action alternative.

INTERCITY PASSENGER, COMMUTER, TOURIST AND EXCURSION RAILROADS

[All track types]

Accident reduction benefits	VSL = $6 M undiscounted benefits	VSL = $6 M discounted PV@7%	VSL = $6 M discounted PV@3%
Property Damage	$685,915	$348,713	$502,039
Injuries	94,861	48,227	69,431
Fatalities	407,634	207,237	298,358
Total (rounded)	1,188,410	604,177	869,828

FRA does not expect that the overall number of casualties and property damages attributable to the rule will differ from those that would be prevented under the statutory freight hours of service requirements. However, as noted above, there are significant additional potential safety enhancement benefits that may result from the FRA approach. FRA believes that the safety of passenger train operations will be enhanced under this rule as a result of subjecting every crew assignment to a biomathematical analysis either via the analyses conducted while developing the RSAC recommendation or the analyses that will be performed by railroads in the years ahead. The information that railroads will have as a result of this rule regarding fatigue, its causes and symptoms, and its impact on

safety, will allow them to make crew assignments that take this into consideration and minimize fatigue beyond the requirements of this rule. Based on its literature review, FRA is confident that, overall, fatigue awareness training will positively contribute to a stronger safety culture that will extend beyond railroad operations, which is a benefit that extends beyond what would result under the freight hours of service law. For instance, safety and health benefits may accrue from the transfer of knowledge to employees, their families, friends, and others with whom they may share the fatigue knowledge that they acquire from the required fatigue awareness training programs. This fatigue awareness may result in more optimal decisions regarding rest and sleep, leading to less fatigue and improved safety outside of passenger train operations during the course of daily activities that may also include the operation of motor vehicles or other heavy machinery. This fatigue awareness may also result in proper identification and treatment, if necessary, of fatigue symptoms. Although FRA has not identified research on the effectiveness of the specific types of fatigue training programs required under this rule, many studies have indicated health training programs in general produce meaningful behavioral performance improvements.

With respect to the ''status-quo'' baseline, this rule imposes costs that are higher than the safety benefits FRA was able to quantify. Costs compared to the ''status quo'' baseline total $2.1 million (undiscounted), $1.3 million (PV, 7 percent), and $1.6 million (PV, 3 percent). Quantified benefits compared to the ''status quo'' baseline total $1.2 million (undiscounted), $0.6 million (PV, 7 percent), and $0.9 million (PV, 3 percent). However, there are additional benefits that have not been quantified, but should be considered when comparing the overall costs and benefits. As when compared to the ''no-regulatory action'' baseline, FRA believes that the safety of passenger train operations will be enhanced under this rule as a result of a stronger safety culture that may extend beyond railroad operations, which would be a benefit that extends beyond what would result under the freight hours of service law. Separately, accident avoidance will result in fewer unplanned delays to passengers and freight commodities impacted by passenger train accidents and incidents that result in blocking one or more tracks for prolonged periods. These costs can be very substantial given the need to investigate accidents and often clear wreckage. It is not unreasonable to expect that the unquantified benefits will raise the benefits to a level quite comparable to the costs. FRA also believes that the unquantified benefits coupled with the quantified safety benefits are comparable to the costs associated with meeting the intent of the statutory mandate.

After careful consideration of comments received in response to the NPRM, FRA has made modifications to its proposal in the final rule that reduce the overall burden by approximately $100,000 due in equal part to flexibilities added by extending the deadline for fatigue awareness training and the expanded ability to rely on the findings of analyses conducted for other assignments.

II. Statutory Background and History

Federal laws governing railroad employees' hours of service date back to 1907 with the enactment of the Hours of Service Act. These laws, codified as amended primarily at 49 U.S.C. 21101–21109, are intended to promote safe railroad operations by limiting the hours of service of certain railroad employees and ensuring that they receive adequate opportunities for rest in the course of performing their duties. Public Law 103–272 (1994). The Secretary is charged with the administration of those laws, collectively referred to in this document as the hours of service laws (HSL). This function has been delegated to the FRA Administrator. 49 U.S.C. 103(c); 49 CFR 1.49(d).

Congress substantially amended the HSL on three occasions. The first significant amendments occurred in 1969. Public Law 91–169, 83 Stat. 463. The 1969 amendments reduced the maximum time on duty for train employees [2] from 16 hours to 14 hours effective immediately, with a further reduction to 12 hours automatically taking effect two years later. Congress also established provisions for determining, in the case of a train employee, whether a period of time is to be counted as time on duty. 49 U.S.C. 21103(b). In so doing, Congress also addressed the issue of deadhead transportation [3] time, providing that ''[t]ime spent in deadhead transportation to a duty assignment'' is counted as time on duty. Although time spent in deadhead transportation from a duty assignment to the point of final release is not included within any of the categories of time on duty, Congress further provided that it shall be counted as neither time on duty nor time off duty. 49 U.S.C. 21103(b)(4). This provision effectively created a third category of time, known commonly as ''limbo time.''

In 1976, Congress again amended the HSL in several important respects. Most significantly, Congress expanded the coverage of the laws, by including hostlers within the definition of employees now termed ''train employees,'' and adding the section providing hours of service requirements for ''signal employees,'' now codified at 49 U.S.C. 21104. Congress also added a provision that prohibited a railroad from providing sleeping quarters that are not free from interruptions of rest caused by noise under the control of the railroad, and that are not clean, safe, and sanitary, and prohibited beginning construction or reconstruction of sleeping quarters in an area or in the immediate vicinity of an area in which humping or switching operations are performed after July 7, 1996. See Public Law 94–348, 90 Stat. 818 (1976).

Section 108 of the RSIA also amended the HSL in a number of significant ways, most of which became effective July 16, 2009. See Section 108 of Public Law 110–432, Div. A, and FRA Interim Statement of Agency Policy and Interpretation at 74 FR 30665 (June 26, 2009). The RSIA established a limit of 276 hours per calendar month for train employees on service performed for a railroad and on time spent in or waiting for deadhead transportation to a point of final release, increased the quantity of the statutory minimum off-duty period after being on duty for 12 hours in broken service from 8 hours of rest to 10 hours of rest, prohibited communication with train or signal employees during certain minimum statutory rest periods, and established mandatory time off duty

[2] A ''train employee'' is defined at 49 U.S.C. 21101(5) and 49 CFR 228.5 as an individual engaged in or connected with the movement of a train, including a hostler. FRA also interpreted this statutory term in published interpretations in 49 CFR part 228, appendix A, providing: ''Train or engine service refers to the actual assembling or operation of trains. Employees who perform this type of service commonly include locomotive engineers, firemen, conductors, trainmen, switchmen, switchtenders (unless their duties come under the provisions of section 3 [49 U.S.C. 21105]) and hostlers.'' Other employees, such as food service providers or sleeping car attendants, who may work on passenger trains, but have no responsibility for assembling or operating the train, are not within the definition of a train employee, and are, as such, not generally covered by this rule, or any other hours of service limitations, but they would be covered if they performed functions related to assembling or operating the train, regardless of the employee's job title.

[3] ''Deadheading'' is defined at 49 CFR 228.5 as the physical relocation of a train employee from one point to another as a result of a railroad-issued verbal or written directive.

for train employees of 48 hours after initiating an on-duty period on six consecutive days, or 72 hours after initiating an on-duty period on seven consecutive days. 49 U.S.C. 21103–21104. The RSIA also revised the definition of ''signal employee'' to include contractors who perform the work of a signal employee within the scope of the statute. 49 U.S.C. 21101(4).

However, Section 108(d) of the RSIA, which became effective on October 16, 2008, provided that the requirements described above for train employees would not go into effect on July 16, 2009, for train employees when providing commuter or intercity rail passenger transportation. 49 U.S.C. 21102(c). Section 108(d) further provided that these train employees, who provide commuter or intercity passenger rail service, would continue to be governed by the old HSL (as they existed immediately prior to the enactment of the RSIA, at 49 U.S.C. 21103 prior to its 2008 amendment), until the effective date of regulations promulgated by the Secretary. 49 U.S.C. 21102(c). However, if no new regulations are in effect before October 16, 2011, the provisions of Section 108(b), which applied to train employees, would be extended to these employees at that time. *Id.*

Section 108(e) of the RSIA specifically provides the Secretary with the authority to issue hours of service rules and orders applicable to train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in 49 U.S.C. 24102), that may be different from the statute applied to other train employees. 49 U.S.C. 21109(b). Section 108(e) of the RSIA further provides that such regulations and orders may address railroad operating and scheduling practices, including unscheduled duty calls, communications during time off duty, and time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release, that could affect employee fatigue and railroad safety. *Id.*

Section 108(e) of the RSIA also provides—

> [i]n issuing regulations under subsection (a) the Secretary shall consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue, a railroad's use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad's required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

49 U.S.C. 21109(c). Section 21109(a) of title 49 of the U.S. Code refers to other regulatory authority granted to FRA, as the Secretary's delegate related to the HSL, which is not relevant to this rule. One of the goals of the present rulemaking is to identify and reduce unacceptable fatigue for the employees who will be covered by the final rule. Therefore, as will be described below, FRA has based these regulations on scientific research related to fatigue and fatigue abatement, as applied to railroad scheduling practices and operating conditions for train employees providing commuter and intercity rail passenger transportation. Section III below will describe the primary scientific foundation and support for the requirements contained in this rule. In addition, scientific considerations will also be addressed in discussion of various elements of the rule, including in the discussion of specific provisions in Section VI, Section-by-Section Analysis, below.

III. Scientific Background

Most mammals, including human beings, have an approximately 24-hour sleep-wake cycle known as a ''circadian rhythm.'' Rapid changes in the circadian pattern of sleep and wakefulness disrupt many physiological functions such as hormone releases, digestion, and temperature regulation. Physiological functions can be affected, performance may be impaired, and a general feeling of fatigue and debility may occur until realignment is achieved. Jet lag, a commonly experienced syndrome when flying across several time zones, especially when flying east, is similar to the experience of individuals working schedules with abrupt changes in the timing of work and subsequent sleep.

Fatigue risk in an industry that operates 24 hours a day and 7 days a week is not just dependent on how many hours per day a person is permitted to work, or the amount of time that a person is required to be off duty between periods of work. Other significant factors in the level of fatigue risk include the time of day that an employee works, the number of consecutive hours worked, direction and rate of schedule rotation, and the number of consecutive days that an employee works. In addition, the quantity and quality of sleep vary with the time of day and environmental conditions in which sleep occurs. Furthermore, there are significant individual factors such as sleep disorders, age and time of day (*e.g.,* morning or evening that may affect one's fatigue and alertness. Because of natural circadian rhythms and environmental and social factors, most people are able to achieve the best quality and most restful sleep at night.

The railroad industry by necessity is a continuous operation, 24 hours a day, seven days a week, 365 days a year, including both day and night work. Consequently, fatigue risk mitigation is a very important strategy of a railroad safety management system. In fact, the design and operation of the work schedule system are perhaps the most essential elements of that fatigue risk management strategy. While the purpose of any work schedule system is to provide the organization with a methodical means of organizing the timing and structure of work to maximize efficiency and productivity, seldom are these schedules designed to minimize the safety risks associated with work schedules that are incompatible with human biological limitations, such as our circadian system. Because the railroad industry is a continuous service industry, and because both employees and the general public are exposed to the safety risks associated with railroad operations, researchers have long called for validated fatigue models to better identify and mitigate fatigue-related risks associated with work scheduling.[4]

The general purpose for a regulation requiring an industry to use a valid fatigue model is to impose a minimum standard for identifying and mitigating fatigue risk that otherwise might not occur without such a standard. These models take into account the complex interaction between human physiology and work times, something that would be very difficult to specify through other means. Use of fatigue modeling tools to evaluate work schedules, however, is just one aspect of mitigating fatigue risk in a larger system. While FRA intends to enforce the minimum standards in the regulatory text, including those related to fatigue models, it also hopes that the industry will go beyond compliance with this standard by using the models and other tools to assess and address fatigue risk across the system.[5]

For example, if a fatigue model were to identify a particular type of work

[4] See Pilcher and Coplen, Ergonomics, 2000, Vol. 43, No. 5, 573–588.

[5] FRA notes that other provisions of the RSIA mandate issuance of regulations requiring certain railroads to implement railroad safety risk reduction programs and plans; one component of each plan is a fatigue management plan. See 49 U.S.C. 20156.

schedule that violates the model's fatigue threshold, and thus requires fatigue mitigation, the carrier may discover underlying systems issues and factors (*e.g.,* inadequate rest facilities, *etc.*) that contribute to fatigue-related risks on not only that work schedule, but also on other less fatiguing schedules that do not violate the fatigue threshold. The use of fatigue modeling in this way, then, provides the organization with a method for systematically identifying and addressing the underlying system risks, as opposed to those risks only for a given work schedule. In going beyond compliance with the minimum standard, the organization also builds its organizational capacity for mitigating fatigue as a major safety risk factor across the system.

As previously mentioned, the statutory hours of service requirements currently in effect for train employees providing commuter and intercity rail passenger transportation establish a maximum on-duty time of 12 hours in a 24-hour period, and a minimum off-duty time of 8 hours in a 24-hour period, or 10 hours after a period of 12 consecutive hours on duty. Statutory requirements applicable to train employees on freight railroads, as revised by the RSIA, include a limitation on the number of consecutive days on which a train employee may initiate an on-duty period. However, the HSL for the railroad industry have never, up to the present day, differentiated in their requirements based on the time of day in which service is performed, or the time of day that a period is available for rest.

As will be discussed further below, FRA conducted two work/rest diary studies with train employees in freight and passenger operations. Data from these studies indicate that train employees get more sleep than the average U.S. adult. While 46 percent of U.S. adults get less than seven hours of sleep, only 35 percent of freight train employees and 41 percent of passenger train employees get less than seven hours of sleep. This amount of sleep results in a level of fatigue that increases accident risk by 21 to 39 percent.[6] Moreover, certain operational characteristics of commuter and intercity passenger service mitigate the fatigue associated with this amount of sleep loss relative to freight service. For example, many train employees on commuter and intercity passenger railroads work scheduled assignments, in which they begin and end their work day at approximately the same time each day. These employees also usually begin and end their duty tour at the same location, meaning that they can go home at the end of their work day and sleep in their own beds. In addition, very few scheduled assignments on most railroads operate during late night hours, and many of them result in duty tours significantly shorter than the maximum hours that the employee would be allowed to remain or go on duty under the existing law or this regulation. Because these characteristics are more likely to allow for periods of rest that are consistent with normal circadian rhythms, they will provide better opportunities for rest, and less risk for fatigue. In addition, as will be discussed further below, two FRA work/rest diary studies demonstrate that levels of fatigue are not equivalent in freight and passenger operations (Work Schedules and Sleep Patterns of Railroad Train and Engine Service Workers *http://www.fra.dot.gov/downloads/Research/ord0922.pdf*) (which included data from a small number of train employees in passenger operations); Work Schedules and Sleep Patterns of Railroad Train and Engine Employees in Passenger Operations *http://www.fra.dot.gov/rpd/downloads/TR_Work_Schedules_and_Sleep_Patterns_final.pdf* (the diary study conducted to support this rulemaking).

For all of these reasons, FRA has determined that some of the specific limitations that Congress applied to train employees on freight railroads in the RSIA are not appropriate for train employees on commuter and intercity passenger railroads.

However, FRA also recognizes that some train employees covered by this rule experience a level of fatigue at which safety may be compromised. This is particularly true of those employees who do not work scheduled assignments and may not return home at the end of each duty tour, or who are required to perform service during late night hours, or to work duty tours of the maximum length allowed by existing requirements, with only the minimum required rest between duty tours. FRA has attempted, in this regulation, to specifically address those employees who are most at risk for fatigue, even when in compliance with specific hours of service limitations. As will be discussed below, research that resulted in the validation of fatigue models using data from freight railroads demonstrated that fatigue increases the risk of a human factors accident. In addition, as will be discussed below, diary data show the risk of fatigue in passenger operations. The risk must be measured in order to be managed, and fatigue models allow for that measurement.

An effective proactive fatigue risk management program needs to balance the amount of work performed against when the work is performed, how long a work schedule is in effect in terms of hours in a day, consecutive days, and other variables. This regulation addresses fatigue risk by going beyond establishing limitations on the amount of time that an employee may work, and the minimum amount of time that an employee must be off duty between duty tours. It additionally requires the analysis of the fatigue risk in employee work schedules using a biomathematical model of performance and fatigue, identification of those schedules that present an unacceptable level of fatigue risk, and mitigation of the identified fatigue risk. In addition, the regulation establishes different requirements for schedules of employees who operate trains during the late night hours in which the fatigue risk is greatest. Thus, the rule will specifically address those schedules the characteristics of which present a risk for fatigue, even when otherwise in compliance with required maximum on-duty and minimum off-duty periods and other limitations. These risks would not be addressed by a regulation that simply established maximum on-duty and minimum off-duty periods, just as they are not addressed by the existing statutory requirements.

A. Validated and Calibrated Fatigue Models [7]

A biomathematical model of performance and fatigue that has been properly validated and calibrated predicts accident risk based on analysis of identified periods of wakefulness and periods available for sleep.

''Validation'' of a biomathematical model of human performance and fatigue means determining that the output of the model actually measures human performance and fatigue. There are two dimensions to this validation. The first is that the model must be demonstrated to be consistent with currently established science in the area of human performance, sleep, and fatigue. The second part of the validation process involves determining that the model output has a statistically reliable relationship with the risk of a human factors accident caused by fatigue, and that the model output does

[6] See Hursh, *et al. infra* at footnote 7.

[7] For a discussion of existing models and their application, see Dean II, D.A., Fletcher, A., Hursh, S.R. and Klerman, E.B., *Developing Models of Neurobehavioral Performance for the ''Real World,''* J. Biol. Rhythms 2007; 22; 246.

not have such a relationship with nonhuman factors accident risk.

In general, and for the purpose of compliance with this rule, a model will be validated if statistical analyses demonstrate the existence of a statistically significant relationship between the output of the model and the human factors accident risk ratio, and the absence of such a relationship between the output of the model and the non-human factors accident risk ratio. The presence of a statistically significant relationship is evaluated by way of the correlation coefficient (r) with statistical significance requiring a *p*-value of less than 0.05. The first step is the selection of bin [8] edges that correspond to varying levels of fatigue, (*e.g.,* the ''not fatigued'' bin and the ''severely fatigued'' bin). The ''not fatigued'' bin is determined by the output of the model when sleep occurs or can occur for 8 or more hours, without abrupt phase changes, between 10 p.m. and 10 a.m. This is similar to the amount of fatigue produced by the standard 9 a.m. to 5 p.m., Monday through Friday work week. The performance bin ''severely fatigued'' is determined by the output of the model when there is total sleep deprivation for 42.5 hours after waking at 7 a.m. This is similar to the amount of fatigue produced by a permanent night shift schedule with six consecutive 12-hour work periods followed by 1 day off. These two bins are the ''anchor'' bins for the validation procedure. Four additional bins, equally spaced between the anchor bins, accommodate the intermediate fatigue scores.

Calibration is, in general, the assignment of numerical values to represent aspects of empirical observations. In the case of human fatigue and performance, the calibration of a fatigue scale would start with the assignment of values to ''not fatigued,'' and the most fatigued condition might be described as ''severely fatigued.'' The calibration process starts during the validation process with the assignment of model output values to anchor bins for ''not fatigued'' and ''severely fatigued.'' The next step consists of determining the fatigue threshold. Given a scale for human fatigue and performance and a relationship between that scale and human factors accident risk, a final calibration point would be to determine the fatigue value at which fatigue becomes unacceptable because the increase in accident risk at that level compromises safety. This is the fatigue threshold.[9]

The procedure for determining the fatigue threshold consists of several computations. First, the cumulative risk for the six fatigue score bins is determined for human factor and non-human factor accidents. Next, a 95-percent confidence interval is calculated for the cumulative risk in each bin. Finally, the fatigue score bin in which human factor cumulative risk exceeds both human factors Accident Risk Ratio = 1 and the mean non-human factors risk is determined. This is the fatigue threshold for the model.[10]

The accident risk is defined as an odds ratio, expressed as a percentage of accidents occurring when employees involved in the accident are within a given range of fatigue, divided by the percentage of time spent by the individual working in that given range of predicted fatigue. For example, if 20 percent of accidents occur when an employee is within a particular range of predicted fatigue, and 10 percent of an employee's time in a given duty tour is spent within that range of predicted fatigue, then that specific range of predicted fatigue has doubled the accident risk.[11]

1. Fatigue Avoidance Scheduling Tool™ Model

FRA-sponsored research resulted in the development of a Sleep, Activity, Fatigue, and Task Effectiveness (SAFTE) model and Fatigue Avoidance Scheduling Tool™ (FAST) that have been validated and calibrated using data from freight railroads. FAST is a biomathematical model of performance and fatigue that can be used to assess the risk of fatigue in work schedules and to plan schedules that ameliorate fatigue. The model takes into account the time of day when work occurs (circadian rhythm) and opportunities for sleep based on work schedules.[12]

The model validation used work histories from 400 human factors accidents and 1,000 non-human factors accidents on freight railroads. The model has not specifically been validated using passenger railroad accidents, because there were not enough such accidents in the relevant time period to obtain statistically significant results, and had the period of analysis been extended sufficiently to capture enough passenger railroad accidents, much of the needed work schedule data for the employees involved in those accidents would no longer be available. However, FAST measures fatigue and effectiveness, based on laboratory analysis of cognitive and sensory motor functions during sleep deprivation, which are not job specific. Furthermore, the tasks associated with freight and passenger train operations are actually highly similar. In addition, there was no statistically significant difference between the proportion of accidents in categories associated with fatigue, between freight and passenger railroads. For all of these reasons, FRA has determined that the model is valid for use in evaluating fatigue levels in passenger railroad schedules for the purposes of this rule. Indeed, the FAST model has been used by other entities, including the military and the airline industry.

FAST was used to calculate cognitive effectiveness (the inverse of fatigue) on a scale from 0 (worst) to 100 (best) using the 30-day work histories of locomotive engineers prior to the accidents and at the time of the accidents.[13] Cognitive effectiveness is a metric that tracks speed of performance on a simple reaction time test and is strongly related to overall response speed, vigilance, and the probability of lapses.

The analysis revealed a significant high correlation between reduced predicted crew effectiveness (as a result of increased fatigue) and the risk of a human factor accident for freight railroads. As was discussed above,

[8] In statistics, a ''bin'' is a discrete, non-overlapping interval of a variable. Here, the variable is the level of fatigue.

[9] For the purposes of this regulation, the fatigue threshold is referred to as a level of fatigue at which safety may be compromised, in recognition of the fact that while it is possible to determine the level of fatigue expected to be produced by working a certain schedule, that is not necessarily the exact level of fatigue experienced by each individual employee working that schedule.

[10] A model may also be calibrated by reference to a model that has been previously validated and calibrated, as discussed in Section III.A.2, below.

[11] For more information on the proper procedures for validation and calibration of a biomathematical model of performance and fatigue, see Raslear, T.G., *Criteria and Procedures for Validating Biomathematical Models of Human Performance and Fatigue; Procedures for Analysis of Work Schedules.* (A copy of this document has been placed in the docket for this rulemaking.)

[12] For a description of the FAST model, see Hursh, S. R., Redmond, D. P., Johnson, M. L., Thorne, D. R., Belenky, G., Balkin, T. J., Storm, W. F., Miller, J. C., and Eddy, D. R. (2004). *Fatigue models for applied research in warfighting. Aviation, Space, and Environmental Medicine, 75,* A44–53.

[13] Hursh, S. R., Raslear, T. G., Kaye, A. S., and Fanzone, J. F. (2006). *Validation and calibration of a fatigue assessment tool for railroad work schedules, summary report* (Report No. DOT/FRA/ORD–06/21). Washington, DC: U.S. Department of Transportation.

http://www.fra.dot.gov/downloads/Research/ord0621.pdf; Hursh, S. R., Raslear, T. G., Kaye, A. S., and Fanzone, J. F. (2008). *Validation and calibration of a fatigue assessment tool for railroad work schedules, final report* (Report No. DOT/FRA/ORD–08/04). Washington, DC: U.S. Department of Transportation. *http://www.fra.dot.gov/downloads/Research/ord0804.pdf.*

although FAST was validated using freight railroad accidents, the cognitive and sensory motor functions it measures are not job specific, so the resulting determinations of effectiveness and accident risk are equally applicable to passenger railroads. There was no significant relationship between increased fatigue and non-human factor accidents. In addition, the data showed that there is a reliable relationship between the time of day of human factor accidents and the expected, normal circadian rhythm. The circadian pattern was not reliably present for non-human factor accidents. The risk of a human factor accident is increased by 20 percent by working during the hours from midnight to 3 a.m. *Id.*

The study showed that there is an elevated risk of human factors accidents at any effectiveness score below 90, and accident risk increased as effectiveness decreased. The risk of a human factors accident is increased by 21 percent at effectiveness scores at or below 70, which is a level of risk elevated beyond chance level, and greater than the mean risk of non-human factor accidents. Twenty-three percent of the freight accidents examined occurred when an employee involved was at or below an effectiveness score of 70. The study also found that cause codes associated with accidents that occurred at or below an effectiveness score of 70 showed an over-representation of the type of human factors accident that might be expected of a fatigued crew, such as passing a signal indicating stop, or exceeding the maximum authorized speed, which confirmed that the detected relationship between accident risk and predicted effectiveness is meaningful.

Other research, comparing the effects of alcohol and sleep deprivation on performance on a driving simulator, has also indicated that an effectiveness score of 70 is the rough equivalent of a 0.08 blood alcohol level, or the equivalent of being awake for 21 hours following an 8-hour sleep period the previous night.[14] However, direct comparisons between the performance effects of alcohol and fatigue must be made with caution. Some aspects of a complex task, such as driving an automobile simulator, show a high degree of congruence between the effects of alcohol and fatigue, while the effects of alcohol and fatigue on other aspects of the same task are highly dissimilar. For instance, Arnedt *et al.* (2001) found that tracking, tracking variability, and speed variability were all similarly affected by alcohol and fatigue in a driving simulator. However, Arnedt *et al.* found that, while subjects drove faster after consuming alcohol, fatigue did not affect driving speed. In addition, alcohol produced a more rapid deterioration in performance in off-road events (incidents in which the simulated vehicle was driven off the road) than did fatigue. Thus, while it is clear that alcohol and fatigue can both cause deterioration in task performance, the effect of alcohol is often more severe and extensive.[15]

As a result of this analysis, a fatigue threshold (the fatigue level at which there is an unacceptable accident risk due to fatigue) of 70 was established for FAST.[16] Accordingly, an effectiveness score less than or equal to 70 violates that threshold for the purposes of this regulation.[17]

2. Fatigue Audit InterDyne™ Model [18]

Another biomathematical model of performance and fatigue that has recently been validated and calibrated is the Fatigue Audit InterDyne ™ (FAID). FAID was validated and calibrated using the same accident data from freight railroads as FAST used.[19] For the same reasons described above with regard to FAST, FRA has determined that FAID is valid for use in evaluating fatigue levels in passenger railroad schedules for the purposes of this rule.

Analysis of the FAID scores resulted in a statistically significant correlation for human factor accidents and no statistically significant correlation for non-human factor accidents, which meant that FAID could be validated for freight railroads, and, as explained above, FRA has determined that it is equally applicable to passenger railroads. The FAID model was validated with scores of 40 and 120, corresponding to ''not fatigued'' and ''extremely fatigued.'' FAID scores showed a statistically reliable relationship (*p*-value below .05) with the risk of a human factors accident but did not show such a relationship with other accident risk.[20]

However, in analyzing the FAID data for the purpose of calibration, none of the confidence intervals demonstrated a statistically significant increase in cumulative risk. This was true for both human factors and non-human factors accidents. An alternative procedure, using FAST, which was already a validated and calibrated model, allowed for calibration of FAID. The alternative procedure required correlating FAST and FAID scores. The calibration of FAST is the equivalent of fundamental measurement in physics, while the calibration of FAID by reference to FAST is the equivalent of derived measurement, both of which are valid measurement methods.[21]

Correlation of individual FAST and FAID scores found a high level of variation in the individual FAST scores within a FAID bin, so linking fatigue scores on an individual level was not feasible. An alternative method is to calculate confidence intervals for the population, or mean, score. Since biomathematical models are known to be more accurate at predicting population behavior rather than individual behavior, the confidence intervals of the bin means were compared. When analyzed at the population level, the regression line for FAID scores as a function of FAST scores, or FAST scores as a function of FAID scores, has an r of 0.909.

The calibration of FAID indicated that FAID scores above 80 indicate a severe level of fatigue, and that FAID scores between 70 and 80 indicate extreme fatigue. A fatigue threshold (as with FAST, the fatigue level at which there is an unacceptable accident risk due to fatigue) of 60 was established for FAID in its validation report, and an effectiveness score greater than or equal to 60 would violate that threshold.[22]

In the NPRM, FRA proposed to use the threshold of 60 to trigger the requirements to mitigate fatigue in work

[14] *See* Arnedt, J.T., Wilde, G.J., Munt, P.W., and MacLean, A.W. (2001). How do prolonged wakefulness and alcohol compare in the decrements they produce on a simulated driving task? *Accident Analysis and Prevention, 33,* 3, 337–44; Dawson, D., and Reid, K. (1997). ''Fatigue, alcohol and performance impairment.'' *Nature 388,* 23.

[15] See also Williamson, A., Feyer, A.M., Friswell, R., and Finlay-Brown, S. (2000). *Development of Measures of Fatigue: Using an Alcohol Comparison to Validate the Effects of Fatigue on Performance* (Road Safety Research Report CR 189). Canberra, Australia: Australian Transport Safety Bureau.

[16] See Hursh, *et al., supra* note 7.

[17] A 21-day free trial of the FAST Model can be downloaded at *http://fatiguescience.com/products/fast.*

[18] For a description of FAID, see Roach, G. D., Fletcher, A., and Dawson, D. (2004). A model to predict work-related fatigue based on hours of work. *Aviation, Space, and Environmental Medicine, 75,* A61–9.

[19] For details see Tabak, B., and Raslear, T. G. (2010). *Procedures for Validation and Calibration of Human Fatigue Models: The Fatigue Audit InterDyne (FAID) Tool* (Report No. DOT/FRA/ORD–10/14). Washington, DC: U.S. Department of Transportation. (*http://www.fra.dot.gov/rpd/downloads/TR_Procedures_or_Validation_and_Calibration_final.pdf*) (''FAID validation report'').

[20] *Id.* at 9.

[21] Kranz, D.H., Luce, R.D., Suppes, P., and Tversky, A. (1971). Foundations of measurement. Volume 1. Additive and polynomial representations. New York: Academic Press.

[22] A free trial of the FAID Model can be downloaded at *http://www.faidsafe.com/products-main.htm#faid330.*

schedules analyzed using FAID. However, following publication of the NPRM, further schedule analysis revealed that some schedules that had an acceptable level of risk for fatigue when analyzed using FAST, violated the proposed FAID threshold when analyzed using FAID, including schedules, to be discussed in detail below, that included work entirely between the hours of 4 a.m. and 8 p.m. 10.6 percent of these schedules violated the proposed FAID threshold rather than the 2.5 percent expected. Schedules wholly within these hours are defined as ''Type 1 assignments,'' that are deemed not to violate the fatigue threshold, are not required to be analyzed, mitigated or submitted to FRA for approval, and are subjected to a less restrictive consecutive-days limitation. Representatives of the Association of American Railroads (AAR) and the American Public Transportation Association (APTA) who actively participated in the development of this rulemaking, submitted to FRA data illustrating this issue, and suggestions for addressing it. These documents have been added to the docket for this rulemaking.

The calibration of FAID, as indicated in its validation report,[23] and described above, was not successful as a direct process using the fatigue accident validation database. Instead, an indirect process in which values for FAID were related to values for FAST was used. This process is similar to calibrating a measurement instrument by reference to a known standard. In this case, FAST is the known standard because it was directly calibrated using the fatigue accident validation database. There is inherent variability in both FAST and FAID values, so FRA used regression analysis, a statistical method, to determine the estimated mean values of FAID that correspond to mean values of FAST. Table 8 in the FAID validation report shows the corresponding approximate values for FAID and FAST using this procedure. The exact threshold for FAID, as noted in its validation report, is 63.18,[24] as calculated from the regression equation: FAID score = 149 − 1.227 × (FAST score). Taking into account the variability associated with predicting mean FAID scores from mean FAST scores, a range of FAID scores that is highly likely to include the true mean FAID score can be calculated. The upper 99-percent confidence limit [25] for estimating FAID at FAST = 70 is 72.16. This means that we can expect the true mean FAID score to be as high as 72.16.

Allowing the FAID threshold for fatigue to be as high as 72 reduces the percentage of schedules that violate the FAID threshold from 10.6 percent to 2.11 percent in the data presented by AAR and APTA. The passenger train and engine diary study (Work Schedules and Sleep Patterns of Railroad Train and Engine Service Employees in Passenger Operations. DOT/FRA/ORD–11/05), which will be discussed in detail in Section III.B below, indicates that none of the employees subject to this regulation work more than 2.5 percent of the time at a FAST score of ≤ 70. Therefore, FRA concludes that allowing the FAID threshold to be placed at the upper 99 percent confidence limit of 72 is a reasonable solution to this issue. FRA expects that the percentage of schedules that violate a FAID threshold of 72 would be approximately 2.5 percent, which will allow the railroads to focus mitigation efforts on those schedules that are at greater risk for producing an unacceptable level of fatigue and thereby reduce fatigue-related accidents and injuries.

FRA believes that the prediction of the effectiveness of an employee's performance may be used to improve work schedules, to alter to the extent possible the timing of safety-critical tasks to coincide with periods of optimal performance, and to apply countermeasures to reduce the fatigue risk, and the corresponding risk of accidents or other errors associated with that fatigue. It is for this reason that FRA has concluded that it is appropriate to require analysis of employee work schedules using a validated and calibrated biomathematical model of performance and fatigue, as an essential component of these hours of service regulations.

As will be discussed in detail below, this rule requires railroads to mitigate the fatigue resulting from following a certain work schedule, and submit the schedules and fatigue mitigations to FRA for approval. These requirements will be triggered when analysis reveals that an employee working a given schedule will experience 20 percent or more of his or her working time during the schedule at an effectiveness score violating the fatigue threshold under the model used for analysis; that is to say, at an effectiveness score of 70 or less determined by FAST, or at an effectiveness score of 72 or greater as determined by FAID. The applicable effectiveness score could be different if a railroad were using another model that had been properly validated and calibrated. FRA encourages the development, validation, and calibration of alternative models, and their submission to FRA for approval under § 228.407(c), by any railroad desiring to use an alternative model for the analyses required by this rule.[26] FRA expects fatigue science to continue to develop, and also anticipates the implementation of the rule will assist the agency in better assessing the role of fatigue in accidents that may occur in the future. As a result, FRA will consider such developments and new evidence in its regularly-scheduled retrospective review of the rule, and will expedite that review of the rule should evidence suggest such review is appropriate.

B. Diary Study of Train Employees on Commuter and Intercity Passenger Railroads

To further support this rule, FRA conducted primary research specifically directed to train employees of commuter and intercity passenger railroads (Office of Management and Budget (OMB) Control Number 2130–0588).[27] The results of the study provided valuable evidence of the actual levels of fatigue experienced by train employees on commuter and intercity passenger railroads, because the study allowed analysis of the actual periods of time that an employee reports having worked, slept, or spent in other activities during the period analyzed, which may be different from the assigned schedule and presumed periods available for sleep.

FRA had previously conducted similar surveys for signal employees (OMB Control Number 2130–0558), maintenance of way employees (OMB Control Number 2130–0561), dispatching service employees (OMB Control Number 2130–0570), and train employees generally (OMB Control Number 2130–0577). The purpose of these studies was to characterize, using a consistent statistical survey methodology, the work schedules and sleep patterns of each unique group of railroad workers. Because each of these studies used a random sample of each worker population, they provide defensible and definitive data on work/rest cycle parameters and fatigue for the

[23] Tabak and Raslear, infra note 19.

[24] *Id.* at 24.

[25] The upper 99-percent confidence limit represents the highest value of a variable within a 99-percent confidence interval. The 99-percent confidence interval is a range of values with a 0.99 probability of including the true population value of a variable.

[26] See Raslear, *supra* note 11 for information on procedures for validating and calibrating a model.

[27] *http://www.fra.dot.gov/rpd/downloads/TR_Work_Schedules_and_Sleep_Patterns_final.pdf.*

respective group. The small number of train employees on commuter and intercity passenger railroads represented in the previous study of train employees generally did not allow for meaningful conclusions with regard to this subpopulation of train employees. As a result, the present study, specifically focused on this population, was necessary. The present study of train employees on commuter and intercity passenger railroads used the same methodology as the previous studies.

The primary objectives of this study were to design and conduct a survey to collect work schedule and sleep data from train and engine service (T&E) employees, and to analyze the data to characterize the work/sleep patterns and to identify work schedule-related fatigue issues. The goal was to characterize train employees on commuter and intercity passenger railroads as a group, not to characterize such employees on a specific railroad.

The research described in this report had three phases: preparation; field data collection; and data analysis. Since no existing source would provide answers to the study's research questions, a survey of train employees was the only means to obtain the necessary data. The preparation phase included securing approval from the OMB for the proposed data collection. Representatives from the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU) worked closely with the researchers throughout the study.

The study used two survey instruments—a background survey and a daily log. Survey participants used the background survey to provide demographic information, descriptive data for their type of work, type of position, work schedule, and a self-assessment of overall health. The daily log provided the means for survey participants to record their daily activities in terms of sleep, personal time, time spent commuting to and from work, work time, limbo time, and periods of interim release. Study participants also provided self-assessments of the quality of their sleep and their level of alertness at the start and end of each work period. This study used a 14-day data-collection period to accommodate those train employees who did not work a regular schedule.

Researchers drew a random sample of 1275 train employees on commuter and intercity passenger railroads. The size of the sample from each of the two unions was proportional to that organization's representation in the total number of eligible participants. Retirees, full-time union officials, and anyone currently holding a railroad management position were not eligible for the study. Determination of the sample size assumed a 95-percent confidence interval on the estimates for mean sleep time, an error tolerance of 15 percent, and a 33-percent response rate.

Mailing of the survey materials occurred on December 31, 2009. Ten days later, every potential survey participant received a postcard, signed by his or her union president, to encourage the employee to participate in the survey. Three weeks after distribution of the materials, a second postcard thanked those who had decided to participate and encouraged those who had not yet done so to participate.

The overall response rate for the survey was 21 percent. Of the 269 complete responses, 13 could not be part of the analysis because either there were problems with the respondents' log books, or the respondents were not in crafts covered by the survey. (It was not possible to identify these individuals from the information contained in union membership databases.) The nonresponse-bias study based on age found no difference between survey respondents and nonrespondents.

The results of the study support the approach that FRA has taken in this rule. For instance, the results are consistent with the separate analysis during the development of this rule of schedules provided by commuter and intercity passenger railroads, indicating that a fairly small percentage of employee work time (about 1.8 percent) violates the fatigue threshold. The rule focuses additional attention and effort specifically on those schedules presenting this fatigue risk by requiring the mitigation of that risk, while schedules not at risk for fatigue would not be subject to these additional requirements.

In addition, when compared to the results of the previous study that primarily considered train employees on freight railroads, the results of the study of train employees on commuter and intercity passenger railroads support a significantly different approach. Train employees on freight railroads were found to experience some level of fatigue (equivalent to an effectiveness score <90 using the FAST model) during 73 percent of their work time, while train employees on commuter and intercity passenger railroads experienced this level of fatigue during only 14 percent of their work time. The substantive limitations imposed on train employees on freight railroads in the RSIA would largely be unnecessary for the commuter and intercity passenger railroad industry, as well as ineffective to target the specific areas where there is a fatigue risk.

IV. Railroad Safety Advisory Committee (RSAC) Process

A. Overview of the RSAC

In March 1996, FRA established RSAC,[28] which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers, and manufacturers, and other interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AARPCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- APTA;
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers' Association (ATDA);
- AAR;
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- BLET;
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- The Chlorine Institute;
- FRA;
- Federal Transit Administration (FTA);*
- Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRC);

[28] For more information about RSAC activities, see *http://rsac.fra.dot.gov/*. Meetings of the full RSAC are also announced by publication in the **Federal Register**.

- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA);* and
- UTU.

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff plays an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward RSAC recommendations. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action. If the working group or RSAC is unable to reach consensus on a recommendation for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

B. RSAC Proceedings in This Rulemaking

FRA proposed Task No. 08–06 to the RSAC on April 2, 2009. The RSAC accepted the task, and formed the Passenger Hours of Service Working Group (Working Group) for the purpose of developing implementing regulations for the hours of service of train employees of commuter and intercity passenger railroads under the RSIA.

The Working Group is comprised of members from the following organizations:

- AASHTO;
- Amtrak;
- APTA;
- ASLRRA;
- ATDA;
- AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Limited (CP), CSX Transportation, Inc. (CSXT), Iowa Interstate Railroad, Ltd. (IAIS), Kansas City Southern (KCS) railroads, Metra Electric District, Norfolk Southern Corporation (NS) railroads, and Union Pacific Railroad Company (UP);
- BLET;
- BRS;
- FRA;
- FTA;
- IBEW;
- Long Island Rail Road (LIRR);
- Metro-North Commuter Railroad Company (Metro-North);
- National Association of Railroad Passengers (NARP);
- National Railroad Construction and Maintenance Association;
- National Transportation Safety Board (NTSB);
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- Tourist Railway Association; and
- UTU.

The Working Group completed its work after six meetings and several conference calls. The first meeting of the Working Group took place on June 24, 2009, in Washington, DC. At that meeting the group heard several presentations on fatigue science, including a report on the diary study that was to be conducted as described above. The group discussed the general approach for the rulemaking, and it was agreed that analysis of the railroads' work schedules would support the rulemaking. Subsequent meetings were held on February 3, 2010; March 4, 2010; April 6, 2010; May 20, 2010; and June 29, 2010. In addition, a Task Force was formed that met on January 14–15, 2010, March 30–31, 2010, and April 28–29, 2010.

At the conclusion of the June 29, 2010 meeting, the Working Group voted to approve a draft of the proposed rule text, with the exception of two sections, to which the group had suggested numerous edits. It was agreed that FRA would address the remaining issues in those sections and circulate a revised draft, on which the group would vote electronically. After the revised draft was produced, the Task Force had several conference calls to discuss the revised provisions, and FRA also participated in several calls with task force members. Ultimately, on September 22, 2010, the Working Group voted unanimously to agree to the rule text presented in the proposed rule. The group's recommendation was presented to the full RSAC on September 23, 2010. The full RSAC agreed to vote electronically on the proposed rule text recommended by the Working Group, and ultimately accepted its recommendation. Although only a majority was required, the vote was unanimous.[29]

Following the vote of the Working Group and the full RSAC, FRA recognized the need to make two changes to the recordkeeping and reporting requirements in 49 CFR 228.11 and 228.19, to accommodate a new substantive limitation contained in the proposed rule as approved by the RSAC. While the RSAC voted in favor of the proposed substantive requirements in question, and all other elements of the proposed rule, the corresponding amendments to the recordkeeping and reporting provisions were not presented to them. After publication of the proposed rule on March 22, 2011, and consideration of public comments, FRA has made additional changes, as discussed in Section V of the preamble, below.

Earlier, at the February 3, 2010, meeting, FRA presented an initial draft of the rule text, identifying the basic concepts and direction of the rulemaking. Based on discussions at that meeting, a more complete draft was presented at the March 4, 2010 meeting, and the text was refined and supplemented at subsequent meetings. In addition, during the course of the

[29] The rule text voted on by the full RSAC and recommended to FRA is available on the RSAC Web site.

Working Group and Task Force meetings, a number of significant issues were discussed that resulted in changes in the rule text or common understanding of the intent of specific provisions that should be explained. Some such issues will be explained in this section, while other subjects of discussion by the Working Group and the Task Force will be discussed in the Section-by-Section Analysis at Section VI of the preamble.

In addition, as discussed below in the Regulatory Impact and Notices section of the preamble, Section VII, FRA has considered the costs and benefits of this rule. Implementation costs would be associated with analyzing work schedules, training, and rest facilities. However, relative to the ''no regulatory action'' alternative in which passenger railroad train employees would become subject to the new HSL in effect for freight train employees, the rule would result in a cost savings of $57.7 million (discounted at 7 percent) and $65.2 million (discounted at 3 percent) over a 20-year period. The quantified accident reduction benefits achieved under both the ''no regulatory action'' baseline and the rule total $1.2 million (undiscounted), $0.6 million (PV, 7 percent), and $0.9 million (PV, 3 percent). FRA does not expect that the overall number of casualties and property damages prevented will differ under either scenario. Implementation of the final rule will yield these benefits at lower cost. While the rule has lower monetized benefits than costs, when compared to the current HSL, FRA believes that there are unquantified benefits that could close the gap.

C. Significant Task Force Contributions to the Development of the NPRM

As was noted above, the Working Group created the Task Force, comprised of representatives from BLET, UTU, APTA, AAR, and FRA. The Task Force met between Working Group meetings to provide additional input and advice to the Working Group on the approach to the rule, specific concerns as to the rule text, and implementation of the regulatory requirements. Although the Task Force was extremely helpful throughout the development of the proposed rule in offering suggestions as to the rule text, its primary contributions were in the areas of schedule analysis and the creation of a fatigue mitigation tool box.

1. Schedule Analysis

The diary study discussed in Section III.B of the preamble provided valuable evidence of the actual levels of fatigue experienced by train employees on commuter and intercity passenger railroads. However, since many of these employees work scheduled assignments, it was also valuable to evaluate the schedules themselves, to get a sense of the parameters of those assignments that would result in fatigue violating the threshold, which informed some of the provisions of this rule. The Task Force assisted the Working Group by evaluating the schedules and presenting their results to the Working Group.

APTA hired a consultant to analyze the schedules provided by the railroads that were worked by their train employees. The railroads provided all of their schedules for the month of July 2009. The schedules were analyzed using the FAST model, including conservative assumptions about the sleep that would be obtained by an employee working that schedule. For example, the analyses assumed that employees did not sleep during periods of interim release.

The analyses that the Task Force presented to the Working Group demonstrated that most schedules did not result in an employee's violating the fatigue threshold. This was true even for schedules in which the employee reported for duty at 4 a.m. and was relieved from duty at 8 p.m., for a 16-hour duty tour that included a total of 12 hours on duty and a 4-hour interim release. Most of the problematic schedules identified through the analysis presented by the Task Force involved duty tours in which some time was spent working during late night hours. These analyses formed the parameters for FRA's definitions of ''Type 1 assignment'' and ''Type 2 assignment'' for which different requirements would apply in this rule.

2. Fatigue Mitigation Tool Box

Because a major aspect of this rule requires mitigation of the fatigue risks identified in those schedules that resulted in an employee's violating the applicable fatigue threshold, and experiencing a level of fatigue at which safety may be compromised, the Task Force assisted the Working Group by developing a fatigue mitigation tool box, a document that would illustrate the variety of ways in which a railroad might seek to address the fatigue risks in its schedules. (A copy of this document has been placed in the docket for this rulemaking.) The tool box itself is not intended to become a part of the regulatory text. Instead, it is intended to provide the variety of methods from which a railroad may propose, in its plans submitted to FRA for approval, to mitigate identified fatigue risks in its work schedules, to bring them into compliance with the regulation. It is expected that not every tool will be appropriate for each railroad, or for individual locations or schedules on a given railroad, and that the railroads, in consultation with their labor organizations, will choose the mitigation tools most appropriate to each circumstance, subject to FRA review and approval. In addition, the tool box is expected to be a living document, as the available fatigue mitigation tools will change over time as fatigue science continues to develop, or as railroad operations change, either generally or as related to specific properties or schedules. The tool box as a whole will not be approved by FRA, nor will it be maintained by FRA as it evolves. FRA will evaluate the appropriateness of specific fatigue mitigation tools as they are submitted to FRA as part of a railroad's plan to mitigate fatigue risks associated with particular schedules.

This section will describe a representative sample of the variety of the tools included in the tool box developed by the Task Force, which may be applied to mitigate fatigue risk. This discussion is not intended to provide an all-inclusive list of the possible fatigue mitigation tools. A railroad is free to use any fatigue mitigation tool that it believes is effective in reducing the fatigue risk found in its schedules, subject to FRA's review and approval when the tools are applied to mitigate fatigue in a particular work schedule.

Perhaps the easiest mitigation tool to understand that was identified by the Task Force is the adoption and implementation of a napping policy, and the provision of facilities for employees to take a nap during interim releases or other periods between assignments that may be available for rest during a duty tour. The addition of a period of sleep to the employee's schedule would have a clear impact on the employee's level of fatigue when working that schedule, and the level of fatigue that the employee would be expected to experience throughout the remainder of the duty tour after a nap, which might reduce the risk of fatigue sufficiently to bring the schedule and the employee's effectiveness score within the fatigue threshold.

To use this tool to mitigate fatigue, a railroad would be required to identify, in consultation with its labor organizations or employees, the facilities that would be available for the purpose of rest during the duty tour, that are appropriate to the schedule and location at issue. This would not always require a bunk or a quiet room, though

this might be available at some locations and in certain situations. However, the period available for rest would have to be at least 90 minutes for this mitigation tool to be applied, as this amount of time would provide sufficient opportunity for an employee to get to his or her napping location and fall asleep, having enough time for a nap of sufficient duration to be beneficial to the employee's level of fatigue, and then also allowing the employee time to become fully awake and ready to resume the duty tour.

Another mitigation tool, applicable to railroads and locations using employees from an extra board, would be the use of multiple extra boards that are temporally separated, so that employees would be scheduled to work morning assignments or evening assignments, rather than being subject to calls for assignments at all times of day. For example, employees assigned to a morning extra board might be subject to being called only for assignments requiring them to report for duty between 4 a.m. and 10 a.m., while employees assigned to an evening extra board might be subject to being called only for assignments requiring them to report for duty between 4 p.m. and 10 p.m. Employees on either extra board would know that they would not be called for an assignment requiring them to report for duty outside the times established for the employee's particular assigned extra board. This would lead to greater predictability of schedule and ability to plan rest, while also avoiding (1) circadian shifts between duty tours resulting from changes in the time of day that the employee is awake and (2) difficulties in adjusting to changing periods available for sleep.

Call windows (*i.e.*, limited periods of time during which an employee is subject to receiving calls from the railroad to report for duty) are another mitigation tool in the tool box, which may be combined with a temporally separated extra board, but could also be used even if the extra board were not so divided. For example, a railroad might decide to establish a call window that would reduce or eliminate calls to the employee during the time from 11 p.m. and 5 a.m. Open assignments that would need to be filled from an extra board of employees who would otherwise be called for the assignment during that time would instead be filled before 11 p.m., which would give the employees greater predictability and ability to plan rest, as well as allowing them more rest during the late night hours.

Another possible tool would be to allow employees a period of uninterrupted rest, similar to the requirement that applies to train employees on freight railroads, which is found at 49 U.S.C. 21103(e). The uninterrupted rest could be applied to an employee's statutory off-duty period before or after the employee is to work a schedule violating the fatigue threshold. It could also be applied to periods of interim release within the duty tour.

Education could also be part of the tools that a railroad will use to mitigate fatigue in certain circumstances, and is also a key component of the other mitigation tools. The mitigation tools will not be beneficial if the employees working the schedules to which they are applied do not understand the available tools, and how to properly use them to reduce their fatigue and increase their effectiveness. If employees do not take advantage of the mitigation tools, and use them properly to increase their rest, even those mitigation tools most likely to have the greatest and most tangible impact on reducing fatigue will not have the desired effect. FRA has also recognized the importance of education as a component of fatigue management by specifically requiring in this rule that employees and supervisors receive training on fatigue and strategies for reducing it.

Finally, one additional mitigation tool was discussed by the Task Force that was extremely well-received and supported by the Working Group, including FRA representatives. That suggestion was to develop software that would link the railroad's crew management resources to both the employee's electronic hours of service records (created and maintained in compliance with subpart D of 49 CFR part 228), and a valid biomathematical model of performance and fatigue.

The idea is that the fatigue model would be able to look back at previous duty tours and rest periods to determine which schedules might have sufficiently rested employees available to report for the assignment, not only under the limitations on time on duty and consecutive days and the requirement for minimum time off duty established by this rule, but also in terms of the fatigue threshold. The model would have the benefit of the data from the previous duty tours to take into account in determining whether these schedules would violate the fatigue threshold during the duty tour, as well as at the report-for-duty time. If the analysis revealed that the employees on these schedules would be too fatigued to report for the assignment, or would violate the fatigue threshold during the duty tour, crew management would be alerted that these employees could be at risk if they work this particular assignment. Employees would have to affirm their fitness for duty if asked to work such assignments and be empowered to reject the assignments, because the model is being used to predict group (average) fatigue from work schedules that could be worked by several individuals. Any individual could be more or less fatigued than the average or group. Employees have a responsibility to indicate if they feel fit to work or not, regardless of the effectiveness score that a model would predict. The employer's responsibility is to arrange schedules that minimize fatigue.

While all of the parties to the Working Group agreed that this idea showed great promise as an effective fatigue mitigation tool for the future, it is not something that the railroads will be able to apply immediately, for technological reasons. Most railroads subject to this rule do not yet create and maintain their hours of service records electronically in compliance with subpart D, although there is interest among those railroads in developing hours of service electronic recordkeeping programs. In addition, software would need to be developed that would allow the fatigue model to retrieve data from the electronic recordkeeping system, without any possibility of altering or otherwise affecting the integrity of the records maintained in the system. Likewise, software would be needed to connect the fatigue model to the crew management system, so that it could appropriately alert that system and prevent an employee being placed on an assignment for which he or she would be too fatigued. If the necessary systems and software can be developed, compliance with the fatigue threshold would become much easier, and there would be much less excessive fatigue to be mitigated.

D. Areas of Working Group and Task Force Concern During Development of the NPRM

During the course of the Task Force and Working Group meetings, a few issues resulted in significant discussion. Some issues were related to specific provisions in the rule text, while other concerns were about the broader implications of the rule, as well as its effects on aspects of railroad operations or existing collective bargaining agreements.

1. Proposed Definitions of ''Type 1 Assignment'' and ''Type 2 Assignment''

Some members of the Working Group suggested that there should be a way to

determine a template for schedules that would be deemed not to violate the fatigue threshold. As was discussed above, the Task Force presented schedule analyses showing that a schedule in which an employee began work at 4 a.m. and was relieved at 8 p.m., resulting in a duty tour with a total time on duty of 12 hours, with a 4-hour period of interim release, did not violate the fatigue threshold.

Based on this analysis, FRA initially defined any assignment beginning no earlier than 4 a.m. and ending no later than 8 p.m., assuming at least a 4-hour period of interim release, as a Type 1 assignment, which would be deemed not to violate the fatigue threshold. Assignments that included any period of time outside the defined time parameters of a Type 1 assignment would be considered a Type 2 assignment, which would be subject to more stringent requirements, including analysis of the schedule using a scientifically valid biomathematical model, and a more restrictive limit on the number of consecutive days on which an employee working such an assignment would be allowed to initiate an on-duty period.

However, some Task Force members pointed out that there could be assignments that include time outside the time parameters of a Type 1 assignment that would not violate the fatigue threshold. In some cases these schedules would only have a small amount of their overall time outside of the Type 1 parameters. For example, an assignment might begin at 4:30 a.m. and end at 8:30 p.m. In addition, some assignments might not violate the threshold because of the short duration of the duty tour involved, such as, perhaps, an assignment from 5 p.m. until 9:30 p.m.

Based on these considerations, FRA amended the definition of ''Type 2 assignment'' to indicate that if an assignment does not include any time between midnight and 4 a.m., then the particular time of day or night that an assignment is to be performed is not the only determinant of whether an assignment is considered a Type 2 assignment. In particular, a Type 2 assignment that is analyzed using a scientifically valid biomathematical model and is determined not to violate the fatigue threshold, and that includes no period of time between midnight and 4 a.m., would be considered a Type 1 assignment.

FRA also added language to the definitions of both ''Type 1 assignment'' and ''Type 2 assignment'' to require compliance with the substantive limitations contained in § 228.405. FRA expects that railroads would not be operating schedules that violate these limitations; most schedules have long been in effect for the railroads subject to this rule, and this was an implicit assumption of the Working Group. For example, a schedule that requires an employee to report for duty at 4 a.m. and to be released from duty at 8 p.m. would have to include a period of interim release of at least 4 hours that is not time on duty, as defined by § 228.405(b). However, this language was added to the definitions to make clear that the schedule analysis and fatigue mitigation requirements of this rule supplement, but do not replace, the specific limitations, and any schedule that violated other provisions of this rule (for example, exceeded 12 hours total time on duty, or did not allow for at least 8 hours off duty, or 10 hours off duty after 12 consecutive hours) could not be deemed ''approved'' by FRA and subject to the less stringent requirements applicable to Type 1 assignments.

2. Proposed Limitations on Number of Consecutive Days

In the Working Group, both the railroads and labor contended that FAST and/or FAID analysis would suggest that an employee could work beyond the limitations in what became the proposed rule and this final rule without adversely affecting safety. One potential requirement about which this was specifically argued was the limitation on the number of consecutive days or days within a prescribed period that an employee would be permitted to initiate an on-duty period before the employee was required to have a 24-hour or two-consecutive calendar days off-duty period at the employee's home terminal under this regulation, which would differ depending on the time of day that the employee works. See § 228.405(a)(3) and (a)(4) of the proposed rule, and § 228.405(a)(3) of this final rule. In the Working Group, the railroads and labor unions presented fatigue analyses for theoretical schedules that would have an employee initiating on-duty periods for numbers of days that exceeded those permitted by the contemplated rule. The railroads and labor also indicated that the current agreements or practices on their properties allow for such schedules.

Research shows that work on successive days without a full day off exponentially increases the accident risk as the number of days worked increases. For instance, after working four consecutive day shifts, there is a 17-percent increase in risk, and after working four consecutive night shifts, there is a 36-percent increase in risk.[30] FRA research on train crew work schedules and sleep patterns[31] has shown that train crews average a 10.25-hour day (work period, limbo time, and commute time) and get 6.88 hours of primary sleep per day. A follow-up study on passenger train crews found that workers on split shift assignments average a 13.75-hour day (work period, interim release, and commute time) and get 6.18 hours of primary sleep. Laboratory studies of restricted sleep[32] show a 5-percent decrease in performance after 7 days with 7 hours of sleep per day and a 15-percent decrease after 7 days with 5 hours of sleep per day. These studies are consistent with the previously noted increase in accident risk with the number of days worked.

Therefore, FRA reasoned that, even if an employee were working a schedule for which the employee's effectiveness score did not violate the fatigue threshold, even when the schedule was worked for more consecutive days or days in a 14-day period than the regulation would permit, at some point the employee would have to use some of the time between duty tours (time that a model would otherwise view as available for rest) to attend to other personal activities. This time spent in activities other than rest would decrease the time actually available to the employee for rest, and, therefore, the employee's actual effectiveness score. This circumstance would be particularly problematic for schedules featuring long duty tours, such as the maximum 12 hours on duty, including an interim release, for a total time of 16 hours in the duty tour, followed by the minimum of 8 consecutive hours off duty before reporting for the next duty tour. From this perspective, FRA believes that, although the available research does not identify the exact number of consecutive days or days in a prescribed period allowed under this rule as the maximum that can be safely worked, the limitations that FRA has established are reasonable.

FRA remains aware that the requirements of the final rule may have

[30] Folkard, S. and Akerstedt, T., *Trends in the Risk of Accidents and Injuries and Their Implications for Models of Fatigue and Performance,* Aviat. Space Environ. Med. (2004).

[31] Gertler, J., and DiFiore, A. (2009). Work schedules and sleep patterns of railroad train and engine service workers (Report No. DOT/FRA/ORD–09/22). Washington, DC: U.S. Department of Transportation.

[32] Balkin, T., Thorne, D., Sing, H. (2000). *Effects of sleep schedules on commercial driver performance* (Report No. DOT–MC–00–133). Washington, DC: U.S. Department of Transportation.

an impact on the collective bargaining agreements affecting the railroads and employees covered by subpart F. For example, there may be some agreements that would allow employees to work a greater number of consecutive days or days in a 14-day period than would be allowed by this regulation. FRA also remains mindful that the law provides an option that enables the regulated community to seek waivers to implement pilot projects in accordance with the requirements of 49 U.S.C. 21108(a) and encourages members of the regulated community to consider this option. Pursuant to 49 CFR part 211, subpart C, the Railroad Safety Board will consider whether or not granting such waivers would be in the public interest and consistent with railroad safety. Where warranted, and upon the necessary showing, FRA may grant waivers of the requirements of this rule, including requirements concerning the maximum number of consecutive days or days in a 14-day period that an employee may work, to allow for the establishment of pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the requirements contained in this rule.

3. Precision of Fatigue Models and Threshold

There was considerable discussion in the Working Group of the precision embodied in the FAST model or the FAID model, and the appropriateness of requiring compliance with a specific fatigue threshold. The railroads argued that models such as the FAST model and the FAID model are not scientifically precise enough to warrant the adoption of a specific threshold, and that different types of operations could safely function at different levels of fatigue. For example, the railroads contended that yard switching activities could safely operate at a different level of fatigue than passenger operations or through-freight activities.

The railroads conceded, however, that the regulatory structure contained in the proposed regulation, and in provisions of the final rule that mirror the proposal would not be problematic for passenger operations. The railroads' concern was that, in the future, someone might argue for adoption of the same regulatory structure for freight operations and, were that to occur, schedules might be prohibited from use that should, in fact, be acceptable from a fatigue perspective.

In FRA's view, a specific threshold is desirable because it provides regulatory certainty as to what railroads must do to be considered in compliance with the regulations. FRA has based its regulation on the best available fatigue science, including the FAST model and the FAID model, which are the only currently validated models, and the appropriate fatigue thresholds for the purpose of compliance with this regulation. As was discussed in Section III above, FRA has adjusted the FAID threshold from the level stated in the preamble of the proposed rule, to achieve a closer correlation between the FAST and FAID thresholds for the purposes of the analyses required by this regulation. FRA has also left open the possibility that other models may be validated, and other thresholds established in the future, which could be used for the purpose of compliance with this regulation.[33] In addition, as new scientific evidence comes to light, FRA will review this rule as discussed in Section III, above.

As FRA has determined that use of these models and their established thresholds adequately protects safety, that this rule does not present significant implementation problems for passenger service, and that a specific threshold provides the desired regulatory certainty, FRA believes that it is appropriate to include in the regulations a requirement for a specific threshold. FRA based this belief on the understanding that the regulatory requirements will be satisfied based on a ''70/20 threshold'' using the FAST model (meaning that the fatigue threshold is violated if an employee's effectiveness score is less than 70 for 20 percent or more of the employee's time on duty,) or a ''72/20 threshold'' using FAID (meaning that the fatigue threshold is violated if an employee's effectiveness score is more than 72 for 20 percent or more of the employee's time on duty.)[34]

In establishing a substantive hours of service regulation with a specific threshold for train employees in passenger service, FRA is not drawing any conclusion about the suitability of such a regulatory scheme for freight operations. There may be substantial differences between freight railroad operating and crew schedules and passenger operating and crew schedules. Passenger railroads have analyzed the results of applying the regulations to their work schedules and concluded that this regulation is feasible. Freight railroads have not undertaken such analysis, nor would they be required to under the regulations, except to the extent that employees of freight railroads may work in passenger service.

4. Freight Railroad Employees Acting as Pilots for Commuter or Intercity Passenger Trains

The Working Group also discussed the application of requirements of proposed subpart F, which have now been adopted, to train employees of freight railroads who occasionally provide pilot service to a commuter railroad or intercity passenger railroad. FRA's locomotive engineer certification regulations require a pilot to assist an engineer who may not be sufficiently familiar with the territory over which he or she is called to operate. See 49 CFR 240.231(b). The railroads indicated that a request for a pilot may come without advance notice, so that it would be difficult to comply with the substantive hours of service limitations and recordkeeping requirements of this regulation, and even more difficult to adhere to the schedule analysis requirements, for an employee who did not otherwise regularly engage in commuter or intercity rail passenger transportation.

The Working Group also cited the safety benefits of having a pilot available on a route when necessary, and the potential risk if commuter or intercity passenger railroads were to become less likely to request a pilot, or freight railroads less likely to be able to make a pilot available when requested, because of concerns about the requirements of this regulation, which has been adopted. FRA acknowledges these benefits. Therefore, although a pilot is performing covered service under the HSL on the assignment on which the pilot service is provided, FRA will not consider a train employee employed by a freight railroad who serves as a pilot on a train operated by a commuter railroad or intercity passenger railroad to be a train employee who is engaged in commuter or intercity rail passenger transportation.

V. Response to Public Comments on the NPRM

FRA received 10 sets of comments on the proposed rule. Comments were received from the National Institute for Occupational Safety and Health (NIOSH); the American Academy of Sleep Medicine (AASM); Port Authority Trans-Hudson (PATH); Metropolitan Transportation Authority (MTA); SEPTA; Strasburg Rail Road Company (Strasburg); Transportation Trades Department (TTD), AFL–CIO (American Federation of Labor and Congress of Industrial Organizations); BLET and

[33] See Raslear, *supra* note 11.

[34] See Hursh, *et al., supra* note 13, and Tabak and Raslear, *supra* note 19.

UTU, which filed joint comments; AAR and APTA. Issues raised in the comments will be addressed in this section. Some issues arising out of the comments were also discussed in Section III, Scientific Background, and some will be further discussed in Section VI, Section-by-Section Analysis, below.

Comments Related to the FAST and FAID Fatigue Models

AAR and APTA indicate in their comments that their analysis shows that passenger train employees' work schedules that are acceptable when analyzed using FAST with a proposed fatigue threshold of 70, violate a proposed FAID fatigue threshold of 60. Consequently, MTA, SEPTA, AAR and APTA, each recommend using a FAID threshold of 90, rather than the threshold of 60 proposed in the NPRM. AAR and APTA each attach to their comments, an analysis performed by the same consultant who performed work schedule analysis for APTA during the development of the proposed rule, in support of their request. MTA, SEPTA, AAR and APTA also contend that FRA agreed with a threshold of 90 for FAID during the Working Group, prior to FAID's validation. FRA disagrees both with a FAID threshold of 90 and with the analysis submitted in support of it.

FRA did not agree during the Working Group process that 90 was the appropriate threshold for FAID, and indeed recalls little, if any, discussion of a FAID threshold, as FAID had not been validated or calibrated at that time. It is possible that the railroads internally discussed a threshold of 90, as some railroads had been using FAID for the purposes of their own analysis even before the commencement of this rulemaking.

The analysis attached to the AAR and APTA comments looked at 101 work schedules from ''some of the largest railroads'' involved in passenger service. It is not clear why that number of schedules was chosen, nor why the specific schedules were chosen for analysis. This suggests that the 101 work schedules are a convenience sample, rather than a random sample of work schedules, which means that these schedules may not be representative of the rail passenger service industry. In addition, the analysis looked at work schedules alone, rather than both work schedules and on-duty accidents in which those working the schedules were involved, as had the FAST and FAID validation studies. The threshold that FRA is seeking is the point at which the risk of a human factors accident involving the person working the schedule increases. That is the point, for the purpose of this regulation, at which ''safety may be compromised'' and the rule requires action to be taken to mitigate fatigue. See § 228.407(a). Looking at work schedule data only, the analysis provided by AAR and APTA has not identified that point. The analysis that they provided uses statistics, rather than fatigue science, to equate a FAST score of 70 with a FAID score of 90, based on where the effectiveness scores produced in the analyzed schedules were clustered. In validating and calibrating FAID, FRA used bins to analyze the data in light of the variation among FAID scores. Biomathematical models such as FAID are more accurate when used to predict population behavior rather than individual behavior, and the goal is establishing a fatigue threshold rather than establishing links between all FAST scores and FAID scores at an individual level. Accordingly, FRA does not believe that the statistical comparison of individual scores is an appropriate basis for establishing a FAID threshold for the purposes of this rulemaking.

FRA recognizes the concern with schedules that are acceptable using one model violating the threshold using another. In Section III, Scientific Background, FRA explained its basis for modifying the FAID threshold, not to 90, as urged by the railroads, but to 72. This change is achieved by basing the FAID threshold on the upper limit of the 99-percent confidence interval rather than the mean. A 99-percent confidence interval for a FAID threshold of 72 means that there is only a one-percent chance of a false positive (*i.e.,* a schedule that will violate the FAID threshold of 72 while not actually posing a risk for the level of fatigue indicated by the threshold). A confidence interval for the FAID threshold is appropriate, since it is calibrated in relation to FAST.

Finally, APTA suggests that FRA commit to further analysis, including analysis specifically of passenger data, which could form the basis for establishing a FAID threshold other than 90. As noted above, FRA does not believe that 90 is a scientifically valid fatigue threshold for FAID. In terms of APTA's recommendation that FRA agree to do further analysis, FRA is certainly willing to acknowledge that the area of fatigue science is still developing and that future developments or analyses may make it appropriate to revisit the models, their thresholds, or other aspects of this rulemaking, as discussed in Section III.

Comments Related to Costs of Compliance With the Proposed Rule

NIOSH questions whether the training costs included in the NPRM included costs to train staff on the use of the models. In the proposed rule, the cost of training staff to use the models was included in the cost of the biomathematical model, which also includes programming (for product enhancement) and technical support, and remains included in the model cost of the final rule. For purposes of clarification, FRA is presenting training related to the models separately.

APTA indicates that the licensing cost for FAST is approximately $500,000 for a single railroad, which is far in excess of the cost estimated by FRA at the NPRM stage, and that the licensing cost for FAID is about five percent of the cost of FAST, or $25,000. FRA clarifies that its cost estimate was used for conduct of the regulatory analysis and as such includes only the cost to ''society,'' which does not include distributional effects that may arise through transfer payments including the revenue collected through a fee, surcharge in excess of the cost of services provided. ''Transfer payments are monetary payments from one group to another that do not affect total resources available to society.'' OMB Circular A–4, p. 38.[35] Thus, the FRA cost estimate included some programming costs for the development of certain enhancements tailored to the passenger rail industry that included the license cost, training on use of the model, and system support. FRA did not include costs associated with the original model development or economic rent from the sale of licenses to passenger railroads. Administrative costs associated with using the model to analyze assignments for purposes of complying with this rule are included in the FRA cost estimate separately. The development costs of the models themselves are considered ''sunk costs'' incurred prior to the rulemaking and not attributable to this rule.

In addition, FRA assumed that railroads would select the lowest cost alternative for achieving compliance. FRA recognizes other factors may contribute to model selection. While FRA did not and does not endorse any particular model or method for use in complying with this rule, and railroads are certainly permitted to use more costly alternatives, for purposes of conducting regulatory analysis, only the

[35] OMB Circular A–4 is available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.*

''opportunity cost'' [36] is included. Any additional expense, however, would not be a cost attributable to this rule. APTA did not provide a basis for its cost estimate of $500,000 per railroad for the FAST model, and based on information available to FRA, a cost of $500,000 does not reflect the opportunity cost to society.

In this case the opportunity cost includes the programming and licensing cost estimated at $75,000, the training cost estimated at $50,000, and product support associated with analyzing assignments for purposes of complying with this rule estimated at $7,500 annually. As noted at the NPRM stage, FRA believes that a significantly lower-cost viable alternative for compliance would be for the railroads to enter into a cost sharing agreement via a trade organization, such as APTA and the Association of Railway Museums (ARM), to facilitate so that one or few licenses are purchased for the use of all member railroads.

On a related note, MTA points out that early in the Working Group process, as the NPRM was being developed, FRA indicated a willingness to explore funding access to the models. Unfortunately, FRA is not in a position to fund access to the models, but, as discussed above, FRA encourages relevant organizations to work together, as there may be ways to provide the model for a group of members that are more cost effective than for each member railroad to secure access individually.

APTA also contends that the cost of fatigue training will exceed $1.8 million for a sample of 5 commuter railroads subject to this regulation. APTA does not provide any background or details related to this stated cost, and it is not consistent with information provided to FRA during the development of the proposed rule. However, it is possible that these costs are based on providing formal, classroom training to all of the employees to be covered by this regulation. As was explained in the NPRM, FRA incorporated significant flexibility into the training requirement, so that each railroad would be allowed to tailor the level of complexity and formality to the needs of its employees. There are likely railroads, or locations on a particular railroad, where the nature of the operations and assignments do not warrant formal classroom training and such training would not be practical or cost-effective. In many cases, there will be lower cost alternatives that will be more appropriate and sufficient to comply with the training requirement.

APTA and MTA both claim costs related to the hiring of additional personnel. MTA says that it would have compliance costs of at least $5 million per year, including the cost of hiring additional train and engine employees. APTA contends that the cost of additional personnel will exceed $15 million for five sample commuter railroads, and $12 million for Amtrak. Neither MTA nor APTA provides any specific information regarding these costs, and FRA does not believe that additional personnel will be required by the regulation. The rule provides substantial flexibility in how railroads may mitigate fatigue in their schedules. Many of the available fatigue mitigation tools, such as allowing employees to take a nap during available periods within a schedule, would significantly reduce fatigue without requiring the railroad to hire additional employees. In addition, should a railroad be unable to sufficiently mitigate the risk of fatigue in one of its schedules, it would also have the option of submitting a declaration of operational necessity to FRA for approval. See § 228.407(b)(1)(ii). Although there may be some circumstances in which a railroad would choose to hire additional employees, the regulation does not require extra hiring, especially not to the extent of the costs alleged by MTA and APTA. Finally, addition of new train crews to perform the same train operations would result in a decrease in the hours of service performed by existing train crews, which in turn would result in a savings that would in large part offset the expense associated with the hours of service performed by new employees and must be taken into account. In other words, it would basically take the same number of total employee hours to operate trains if the train schedules are unchanged regardless of how many train crews participate in the operation, leaving the total wage expense largely unchanged and only impacting the fixed overhead costs resulting from a larger employee pool. The Regulatory Impact Analysis contains a more detailed discussion of such impacts.

Some of the personnel costs described by MTA and APTA may be a result of concerns about the FAID threshold, proposed as 60 in the NPRM, which resulted in a greater number of schedules than expected violating the fatigue threshold. FRA responded to comments about the fatigue models above, and also addressed the issue in Section III of this preamble, Scientific Background. In light of the modifications made by FRA, the impact of this issue will be significantly reduced. In addition, as noted above, schedules violating the threshold do not require the hiring of additional personnel, as there are a variety of ways to mitigate the fatigue that would not require the expense of additional hiring.

PATH also indicates that it would need to hire additional engineers and conductors ''to mitigate the effects of a mandatory 48 to 72 consecutive-hour rest period'' the cost of which it estimates at $4 million annually. This comment appears to refer to the statutory requirements at 49 U.S.C. 21103(a)(4), which do not apply to train employees subject to this regulation. The requirements of this regulation are imposed instead of, rather than in addition to, the requirements for train employees in freight service. If, as PATH contends, its schedules will pass any fatigue analysis, its costs resulting from this regulation should be minimal.

Finally, AAR objects to the cost of having some employees subject to two different sets of hours of service requirements, referring specifically to those employees working from an extra board that includes both freight and passenger assignments. For this reason, AAR suggests that train employees employed by freight railroads should be governed only by the freight hours of service provisions in 49 U.S.C. 21103. This comment will be more fully discussed below, with comments related to the scope of the rulemaking. From a cost perspective, however, the cost of compliance with two separate hours of service schemes is not a new cost, as freight railroads have already had to track their train employees who perform both freight and passenger service under the different statutory provisions currently applicable to both, as freight and passenger train employees have had different requirements since the effective date of the RSIA. In addition, AAR admits that very few employees would be affected by being subject to both freight and passenger requirements, so any cost would likely be minimal.

Comments on the Scope of the Proposed Rule (§ 228.401 and § 228.403)

AASM suggests that FRA should develop an additional subpart to establish comparable language for train employees engaged in transportation services outside of commuter or intercity rail passenger transportation. As was described in the Section II, Statutory Background and History, prior to the RSIA, the Secretary had no

[36] ''The opportunity cost is equal to the net benefit the resource would have provided in absence of the requirement.'' OMB Circular A–4, p. 19.

authority to issue regulations governing the hours of service of train employees. In the RSIA, Congress amended the then-existing statutory hours of service requirements for train employees, but specifically excluded train employees providing commuter or intercity rail passenger transportation from the application of those provisions for a period of three years, during which FRA, as the Secretary's delegate, was granted authority to promulgate hours of service regulations for these train employees. Other train employees remain subject to the hours of service statutory provisions as amended by the RSIA.

AAR and APTA both suggest that train employees on freight service extra boards who occasionally are called to operate passenger trains should be subject exclusively to the freight hours of service statutory requirements, rather than this final rule, and they suggest amending § 228.403 to exclude such employees from the requirements of this rule. FRA does not believe this exception would be consistent with the Congressional authorization, which is to establish hours of service regulations for train employees providing commuter or intercity rail passenger transportation. Congress recognized that the transportation of passengers has different characteristics that make the requirements established for freight operations inappropriate, and that regulations based on fatigue science would be more appropriate to passenger operations, regardless of the entity that employs the train employee providing this service. In addition, the railroads would have to track freight and passenger service separately for business purposes, to bill the commuter operator for the employee's time, even if the employees were just under the freight provisions. Finally, if the fact that an employee could be called on to perform freight service on an as-needed basis is enough to exclude them from the coverage of this rule, this could result in excluding employees who perform predominantly passenger service just for the possibility of their performing occasional freight service.

AAR also suggests that train employees of freight railroads who operate non-scheduled passenger service such as ''Santa trains'' or steam trains should not be subject to this regulation. AAR contends that these employees are ''akin to employees operating work trains'' who were specifically proposed for exclusion from the application of the proposed rule and who are specifically excluded from the application of this final rule by a definition in § 228.403(c). FRA disagrees with this analogy, as train employees operating ''Santa trains'' or steam trains are transporting passengers, while train employees operating work trains are not. In the NPRM, FRA stated its belief that Congress intended that these regulations apply to all railroads providing rail passenger transportation, and therefore included tourist, scenic, excursion and historic railroads within the scope of this regulation. FRA likewise believes it was the intent of Congress to cover operations such as those described by AAR that also involve rail passenger transportation.

AAR also suggests that FRA remove the limit on the number of times a month that train employees employed by a freight railroad who may provide pilot service for a locomotive engineer of a passenger railroad without being subject to the schedule analysis and other requirements of this regulation. AAR acknowledges that it would be unlikely that an employee would provide pilot service more than four times in a month, but says it should be permitted if necessary. FRA agrees with this suggestion for the reasons discussed above in Section IV.D.4, and has eliminated the cap on the provision of pilot service. FRA has also added the exclusion of freight train employees providing pilot service from the coverage of this rule to the rule text, in § 228.403(c), rather than just including it in the preamble, as was done in the NPRM.

APTA recommends that mechanical breakdowns, signal failures, switch failures and similar conditions should come within the non-application provision of § 228.403. FRA does not believe this is appropriate, as these common operational issues do not justify a complete exemption from the provisions of this regulation. This position is consistent with FRA's longstanding interpretation of the comparable statutory nonapplication provision at 49 U.S.C. 21102. See 49 CFR part 228, Appendix A. However, as will be discussed below, to the extent that such issues delay schedules the fatigue implications of which a railroad had previously analyzed and mitigated as appropriate, FRA will allow flexibility as to the schedule analysis requirements and consecutive-days limitations of this rule, if the schedule as delayed does not extend past midnight.

Strasburg suggests that Class III tourist, scenic, historic, and excursion railroad operations should be excluded from the schedule-analysis requirements of this rule, and specifically excluded from the definition of ''Type 2 assignment,'' because of the nature of these operations. Strasburg contends that, even in their busiest periods, these operations generally operate shorter assignments than the duration permitted for a Type 1 assignment under this rule. In addition, employees rarely work more than five days in a row, and schedules begin and end at the same time and location each day. FRA acknowledges that the nature of these operations reduces the risk of cumulative fatigue experienced by employees of such railroads.

While FRA does not believe these operations should be categorically excluded from the requirements of this regulation, FRA will delay the compliance date for tourist, scenic, historic and excursion railroads until 18 months from the effective date of the final rule, or a year longer than other railroads will have to complete their work schedule analysis and make any required submission of schedules and fatigue mitigation tools to FRA.

This extra year to prepare to comply would allow additional time for such operations to obtain necessary resources, but may also allow many such operations to avoid the necessity of obtaining access to an approved biomathematical model and analyzing schedules, if their only Type 2 assignments had already been approved by FRA on the submission of another railroad, or had been modeled by another railroad and showed that they could be treated as Type 1. This deferral of the compliance date is also consistent with a suggestion in APTA's comments that FRA should allow a schedule approved for one railroad to be used by others without also having to analyze the same schedule. FRA will create a public docket of schedules that it has approved, but if such a listing is to be complete, railroads would have to submit to the docket established for that purpose those Type 2 schedules that they analyze and determine do not violate the fatigue threshold and do not need to be mitigated or submitted to FRA for approval and can be treated as Type 1.

Comments on Consecutive-Days Provisions (§ 228.405(a)(3) and (a)(4))

BLET/UTU and TTD contend that FRA has not made a sufficient case for imposing the limitation on employees working only Type 1 assignments included in the proposed rule, which would require that if an employee had not had at least two calendar days in which he or she had not initiated an on-duty period in a period of 14 consecutive calendar days, that employee must have two consecutive calendar days off duty at his or her

home terminal (unless the fourteenth day ended at his or her away-from-home terminal, in which case the employee would be permitted to work a fifteenth day to return to his or her home terminal and then would be required to have two consecutive calendar days off duty at his or her home terminal). BLET and UTU note that schedule analysis conducted during the RSAC process did not support a limitation on Type 1 assignments, and they argue that the proposed limitation was therefore not based on science but was a subjective requirement. FRA does not dispute the assertion that the work schedule analysis did not suggest the specific limitation proposed and adopted in the final rule. However, as FRA stated in the NPRM, even a Type 1 schedule that allowed the minimum rest required by this regulation would eventually result in an employee using time for other life activities (such as commuting, eating, grooming, personal errands, *etc.*) that the approved models assume to be available for sleep, if the employee is not at some point required to have a day off. FRA also notes that fatigue science indicates that individuals may require more than one recovery day to recover from sleep restriction.[37]

In contrast to the position of BLET/UTU, NIOSH says it may be premature to say that an employee working even Type 1 schedules will get sufficient rest, noting that if an employee has only the required minimum 8 hours off duty between duty tours, this will not allow the employee to get 8 hours of rest. Likewise, AASM suggests that the required minimum off-duty period under the regulation should be sufficient to allow for an 8-hour sleep period. FRA is comfortable with the limitations included in the rule, because of the nature of the operations in question, and the fact that the diary study of passenger train employees indicated that these employees are usually getting appropriate amounts of sleep, and most are not subjected to fatigue that would violate a threshold established in this regulation. However, FRA believes that the support of the scientific community for even more stringent limitations indicates that the limitations included in this regulation are quite reasonable.

Many comments asked for further clarification and examples to aid in the discussion of the limitation on Type 1 assignments, and these clarifications have been made throughout the final rule in the many references to this provision, and rule text has been added to clarify the application of these limitations. See § 228.405(a)(3) and the discussion of the provision in Section V, Section-by-Section Analysis.

For example, in the NPRM, FRA stated that if an employee worked only Type 1 assignments for a period of more than 6 consecutive calendar days but less than 14 consecutive calendar days, and then initiated an on-duty period involving a Type 2 assignment, the employee would be required to have the Type 2 assignment's rest period of 24 consecutive hours at the employee's home terminal, and then start the count over with regard to consecutive days or total days worked in a 14-day period. In response, MTA asks in its comment what would happen if an employee worked Type 1 assignments on 13 consecutive days, and then a Type 2 assignment on day 14. If the assignment on the 14th consecutive day had been a Type 1 assignment, the employee would have to have two consecutive calendar days off. It does not make sense to require only 24 consecutive hours off after a more fatiguing Type 2 assignment at that point. FRA has revised the rule text in § 228.405(a)(3) to clarify this issue, and other questions related to the application of these provisions.

Comments on Definitions of ''Type 1 Assignment'' and ''Type 2 Assignment'' (§ 228.5)

SEPTA, AAR and APTA each argue that the definition of ''Type 2 assignment'' should be modified to cover any assignment with time between midnight and 3 a.m., rather than 4 a.m., and that Type 1 assignments should be allowed to begin at 3 a.m. They point to a citation in the NPRM to the FAST validation study, which indicated a 20-percent increase in the risk of a human factors accident by working between the hours of midnight and 3 a.m. This causes AAR to conclude that 4 a.m. is an arbitrary threshold. However, 3 a.m. is actually the absolute low point for circadian rhythm, so it is actually the worst possible time to begin a shift, especially since to do so would require being awake in the period before that, in order to report for duty at 3 a.m. Indeed, NIOSH points out that even the 4 a.m. start time can have the same effect as an overnight shift because the employee must wake up earlier to report for duty at 4 a.m. Therefore, FRA has not modified the definitions as requested.

SEPTA and MTA suggest that Type 1 assignments that are delayed such that they extend past the Type 1 hours, or Type 2 assignments that model as Type 1 and are delayed, should still be treated as Type 1 assignments. This seems reasonable to FRA, as it does not seem appropriate for a schedule to have to be modeled every day if it runs a few minutes late. However, if the delay results in the employee's working in the midnight-to-4-am time period that is always to be considered a Type 2 assignment, the assignment must be considered Type 2 for that day, and the employee who worked it will have worked a Type 2 assignment for the purposes of the consecutive-days limitation. FRA has added rule text to clarify this issue. See § 228.5.

Comments About Nap Policies and Sleep Facilities (§ 228.409)

MTA suggests reducing the minimum nap period to be eligible for fatigue mitigation to 60 minutes instead of 90 minutes. The FRA-proposed 90-minute minimum nap period was the subject of significant Working Group discussion, and FRA does not see a significant reason to change it at this time. FRA notes that the *Commercial Transportation Operator Fatigue Management Reference* indicates that naps should not exceed 45 minutes and that 15–30 minutes should be allowed to fully wake up. If 15 minutes are added to allow time to fall asleep, the total is 75 minutes to 90 minutes.

MTA also suggests allowing railroads to decide on nap policies and sleep facilities unilaterally. FRA believes that the collaboration of labor and management on fatigue mitigation efforts is important to ensure successful fatigue mitigation, and FRA therefore declines to modify these provisions.

Comments About Training (§ 228.411)

Comments about training were centered on the timing of both initial training of existing employees subject to the subpart and immediate supervisors of those employees, and initial training of new employees. The NPRM proposed initial training of such existing employees and supervisors ''as soon as practicable.'' This description of the deadline was deemed too uncertain. NIOSH suggested initial training should be provided to existing employees and supervisors within 90 days of the effective date of the final rule, while SEPTA recommended delaying the deadline for compliance with the initial training requirement for existing employees and supervisors until December 2012, so that it could be aligned with other railroad training

[37] See, *e.g.,* Balkin, T.J. *et al.* ''Effects of Sleep Schedules on Commercial Motor Vehicle Driver Performance,'' FMCSA Technical Report No. DOT–MC–00–133, U.S. Department of Transportation, (2000); Belenky *et al.,* ''Patterns of performance degradation and restoration during sleep restriction and subsequent recovery: A sleep dose-response study,'' Journal of Sleep Research, 12, 1–12, (2003).

schedules. FRA believes that SEPTA's proposal is reasonable, has the benefit of certainty, and is consistent with the period for providing training in certain other FRA rules. Consequently, FRA has amended the training provision to require initial training of existing employees and supervisors no later than December 31, 2012.

With regard to initial training of new employees, which FRA proposed to require within 90 days of an employee's working an assignment that would be subject to this rule, AAR commented that this time frame will not allow employees to be trained within the railroads' normal training schedules. FRA has revised the time period in which new employees must be trained to be consistent with the latest version of FRA's forthcoming training standards, which was discussed in the Working Group as a standard with which it was agreed that the training provision in this regulation should be consistent. Therefore, new employees will have to be trained prior to December 31, 2012 or before they begin work, whichever is later.

Other Comments

BLET/UTU and TTD request that FRA require a ''10-hour call'' prior to an assignment (*i.e.,* notification of the time to report 10 hours in advance of the time at which the employee is requested to report for duty). While FRA agrees that such a requirement would provide predictability as to when an employee will be called to work, adopting a 10-hour call requirement is not possible at this time, as it was not a part of the proposed rule. FRA notes, however, that a 10-hour call is one of the fatigue mitigation tools that was discussed. The regulation requires labor involvement in the determination of fatigue mitigation tools to be applied, so there may be opportunities to voluntarily make use of this scheduling practice.

SEPTA suggested that the rule should place responsibility on the employee not to violate the regulation. FRA agrees that in some circumstances the employee may bear some responsibility, but the railroad bears responsibility for scheduling, so it will also bear some responsibility for scheduling an employee for an assignment that would violate the regulation. The applicable civil penalty provision (49 CFR 228.21) includes a reference to the liability of individuals for civil penalties for violating a requirement or causing the violation of any requirement of part 228, and the penalty schedule for part 228 includes a footnote, common to the penalty schedules of many FRA regulations, providing for the possibility of individual liability for a civil penalty for a willful violation.

Finally, NIOSH says this regulation should be part of a comprehensive fatigue management plan. FRA agrees, and notes that the fatigue mitigation plans applied to particular schedules found to violate the fatigue threshold will be part of overall fatigue management. Appendix D to this rule provides guidance on fatigue management plans. Additional requirements will likely result from other ongoing FRA rulemaking projects.

VI. Section-by-Section Analysis

Subpart A—General

Section 228.1 Scope

FRA is revising this section by adding paragraph (c), which indicates that the regulation prescribes substantive hours of service requirements for train employees engaged in commuter or intercity rail passenger transportation.

Section 228.3 Application

Existing paragraph (a) of this section states that part 228 applies to any railroad or contractor or subcontractor to a railroad except as provided in paragraph (b) of the section.

Paragraph (b) of this section excludes from the scope of this part railroads or a contractor or subcontractor of a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation. This provision would exclude from the coverage of subpart F some tourist, scenic, excursion or historic railroads because they operate off the general system. FRA has otherwise specifically included these operations within the coverage of this regulation, as provided by § 228.401, because if they are not covered by this regulation, their train employees would be subject to the statutory freight hours of service requirements of 49 U.S.C. 21103. As is explained in more detail in the discussion below of § 228.401, FRA believes that Congress intended these operations to be subject to this regulation, rather than the statutory requirements, and FRA does not believe the statutory requirements are appropriate for these operations. Accordingly, FRA is revising paragraph (b) of this section to refer to § 228.401, which is the specific applicability provision for new subpart F.

Paragraph (b) of § 228.3 also excludes from the application of part 228 rapid transit operations in an urban area that are not connected with the general railroad system of transportation. Section 228.401 contains an exclusion for these operations.

Section 228.5 Definitions

FRA is amending this section to add definitions of ''Associate Administrator'' and ''FRA'' as used in this part. Section 101 of the RSIA refers to FRA's ''Associate Administrator for Railroad Safety'' and emphasizes that the Associate Administrator is the Chief Safety Officer. Thus, in this final rule ''Associate Administrator'' means FRA's Associate Administrator for Railroad Safety/Chief Safety Officer.

FRA is also adding definitions of the terms ''Type 1 assignment'' and ''Type 2 assignment.'' As was previously discussed in Section IV, above, these definitions were the subject of significant discussion in the Task Force and the Working Group, particularly because of the implications of a particular schedule's status as a Type 1 assignment or a Type 2 assignment for determining the application of the limitations on consecutive days in § 228.405 and the requirements for analysis of schedules and submission of schedules to FRA for approval in § 228.407. FRA believes that the definitions accommodate the concerns expressed in the Working Group regarding schedules outside the time parameters for a Type 1 assignment that may still present very little risk of an effectiveness score that would violate the fatigue threshold and compromise safety. At the same time, however, the definitions recognize the increased risk of fatigue associated with working late night and very early morning hours, which justifies the application of the more stringent requirements.

FRA added language to these definitions as they appeared in the NPRM to make clear that if an assignment is delayed so that the assignment that an employee actually worked includes any period of time between midnight and 4 a.m., the assignment must be treated as a Type 2 assignment for that employee for purposes of the consecutive days limitations and corresponding rest requirements in section 228.405. As was discussed in Section V, Responses to Public Comments on the NPRM, some commenters suggest that Type 1 assignments, or assignments having some time within the definition of a Type 2 assignment but that modeled acceptably to be treated as Type 1 assignments, should continue to be treated as Type 1 assignments even if delayed.

In most circumstances, this makes sense to FRA, in that railroads should not be expected to model assignments on a daily basis if they extend a few minutes past the 8 p.m. limits of a Type

1 assignment, or past the scheduled end time of a Type 2 assignment that was acceptable to be treated as Type 1. However, if the assignment as delayed includes time between midnight and 4 a.m., such an assignment is always considered Type 2, and an employee working that assignment should have Type 2 consecutive-days limitations and corresponding rest requirements.

FRA has added these terms to this general definitions section for part 228, rather than the definitions specific to subpart F, because these terms are also used in the recordkeeping provisions of subpart B, as amended by this rule.

Subpart B—Records and Reporting

Section 228.11 Hours of Duty Records

Paragraph (c) of this section indicates that paragraphs (b)(13) through (b)(16) do not apply to the records of train employees providing commuter or intercity passenger rail transportation. Paragraphs (b)(13) through (b)(16) relate to substantive provisions of the HSL for train employees, added by the RSIA. As was described above in Section II, these requirements were not extended to train employees on commuter and intercity passenger railroads. The requirements referred to in paragraphs (b)(13) through (b)(16) are not required by this rule and therefore would continue not to apply to train employees providing commuter and intercity rail passenger transportation.

Paragraph (c) of this section now also requires two additional pieces of information, relating to the provisions of § 228.405(a)(3). First, paragraph (c)(1) requires that the record must note the date that begins the series of at most 14 consecutive calendar days that includes the duty tour being recorded. Second, paragraph (c)(2) requires that the record note the date, if any, of a calendar day on which the employee did not initiate an on-duty period prior to the current duty tour in the current series of at most 14 consecutive calendar days. This information will allow the railroad and FRA to determine compliance with the limitations established by paragraph (a)(3), both with respect to calendar days on which the employee did not initiate an on-duty period and consecutive days including one or more Type 2 assignments.

FRA recognizes that most railroads and employees subject to this subpart are currently keeping their hours of service records manually, and it may be burdensome for an employee to be required to keep track of his or her series of at most 14 consecutive days and mark its starting date on the hours of service record each day, as well as indicating whether there had been a prior day off during the series. However, the railroad will have to have some way to track this information. Therefore, if a railroad wishes to keep this information centrally for all of its employees, this will be considered sufficient to satisfy the requirements that the hours of service record include the start date of the at-most 14-day series and the date, if any, that the employee did not initiate an on-duty period during the at-most 14-day series, provided this information is made available to FRA upon request.

Section 228.19 Monthly Reports of Excess Service

FRA is revising paragraph (c) of this section to require railroads to report to FRA instances of excess service related to new substantive limitations contained in § 228.405(a)(3) of this rule. That paragraph limits the number of consecutive days or total days within a series of at most 14 consecutive calendar days that train employees engaged in commuter or intercity passenger railroad transportation may initiate an on-duty period, and requires a minimum amount of time off duty or not initiating an on-duty period after an employee has reached the maximum number of consecutive or total days within the prescribed period, before the employee may return to duty, with different requirements depending on the time of day of the employee's assignments.

Excess service under § 228.405(a)(3)(ii) occurs when an employee has initiated on-duty periods on six consecutive days, including one or more Type 2 assignments, and then initiates a new on-duty period without having had the required 24 consecutive hours off at the home terminal. Paragraph (c)(5) addresses this excess service in the situation when the employee is at his or her home terminal at the end of the duty tour that triggers the rest requirement. Paragraph (c)(6) addresses this excess service, including the exception for an additional initiation of an on-duty period when the employee is not at his or her home terminal at the end of the duty tour that triggers the rest requirement.

Excess service under § 228.405(a)(3)(iii) occurs when an employee has not had two consecutive calendar days in which the employee has not initiated an on-duty period during the series of 14 consecutive calendar days, and initiates a new on-duty period without having had the required two consecutive calendar days without initiating an on-duty period at the home terminal. Paragraph (c)(7) addresses this excess service in the situation when the employee is at his or her home terminal at the end of the duty tour that triggers the rest requirement. Paragraph (c)(8) addresses this excess service, including the exception for an additional initiation of an on-duty period when the employee is not at his or her home terminal at the end of the duty tour that triggers the rest requirement.

In the final rule, FRA has revised this section to reflect the consolidation of the revised consecutive-day provisions into § 228.405(a)(3). These issues were discussed in detail in Section V, Responses to Public Comments on the NPRM, and are further discussed in the section-by-section analysis of these provisions in § 228.405 below.

Subpart F—Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation

Section 228.401 Applicability

This section would establish the specific applicability of new subpart F, which differs somewhat from that of existing subparts in this part. Paragraph (a) of this section provides that the requirements of subpart F apply to railroads and their officers and agents, only with respect to their train employees engaged in commuter or intercity rail passenger transportation. Subpart F does not apply to contractors or subcontractors to railroads, unlike the rest of part 228. See § 228.3(a).

For purposes of subpart F, FRA interprets ''commuter or intercity rail passenger transportation'' to include rail passenger transportation by tourist, scenic, excursion, and historic railroads (referred to collectively for the purposes of this discussion as tourist railroads). FRA believes that in the RSIA Congress intended that these regulations apply to all railroads providing rail passenger transportation, and that Congress did not intend to apply the amended statutory provision at 49 U.S.C. 21103 to tourist railroads because tourist railroad operations are more similar to the other passenger service than they are to freight service. The provisions of the HSL that apply to train employees on freight railroads are not as appropriate, therefore, for train employees on tourist railroads. For fatigue purposes, the most salient difference between passenger and freight operations is that most passenger operations tend to be scheduled, whereas freight operations tend to be unscheduled. Virtually all passenger crew assignments have scheduled on-duty and off-duty times, and the vast majority of passenger crew assignments are to report in the morning

and go off duty in the late afternoon or early evening, thereby reducing the likelihood of on-duty fatigue. Like typical intercity and commuter rail operations, tourist rail operations tend to be scheduled and to occur during the daytime or early evening.

Paragraph (b) of this section provides that this subpart does not apply to urban rapid transit operations not connected with the general railroad system of transportation.

Section 228.403 Nonapplication, Exemption, and Definitions

This section would establish the situations in which this subpart does not apply, provide circumstances in which a railroad may seek an exemption from the provisions of this subpart, and provide key definitions specifically applicable to this subpart.

Paragraph (a) of this section would establish the situations in which this subpart does not apply, such as an act of God. This paragraph is substantively identical to the nonapplication provision of the HSL (49 U.S.C. 21102(a)), which was unchanged by the RSIA. The provisions of this rule would therefore not apply to train employees engaged in commuter or intercity passenger service in the same situations as the statutory hours of service requirements would not apply to other train employees, (or to signal employees or dispatching service employees).

Paragraph (b) of this section would provide the possibility of an exemption from the requirements of this subpart for a railroad having not more than a total of 15 train employees, signal employees, and dispatching service employees. This paragraph is substantively identical to the exemption provision of the HSL at 49 U.S.C. 21102(b), which was unchanged by the RSIA. It would provide the same opportunity for a railroad to seek an exemption from the requirements of this subpart as a railroad would have to seek an exemption from the statutory requirements applicable to its other employees.

Paragraph (c) of this section defines several key terms specifically applicable to this subpart. It defines ''commuter or intercity rail passenger transportation'' as the terms ''commuter rail passenger transportation'' and ''intercity rail passenger transportation'' have been defined at 49 U.S.C. 24102. This definition is consistent with FRA's authority to issue this rule, as Section 108(e) of the RSIA defined these terms as they are defined at 49 U.S.C. 24102.

This paragraph also defines ''train employee who is engaged in commuter or intercity rail passenger transportation'' to establish that the term includes any train employee performing that function, regardless of whether the train employee is employed by a commuter or intercity passenger railroad, or another type of railroad or other entity. The term also includes all train employees employed by a commuter or intercity passenger railroad. The term excludes a train employee employed by another type of railroad or entity who is engaged in work train service. In this final rule, FRA has added language to the proposed definition. As FRA discussed above in Section IV, the RSAC Working Group discussed the application of subpart F to train employees of freight railroads who provide pilot service on trains operated by commuter railroads or intercity passenger railroads, and FRA included preamble language in the NPRM excluding such pilot service from coverage under this rule, provided that an employee does not serve as a pilot more than four times in a calendar month, or engage in any other commuter or intercity rail passenger transportation. In response to comments on the scope of the rulemaking, discussed further in Section V, Responses to Public Comments on the NPRM, above, FRA has eliminated the cap on the amount of pilot service that may be performed, and has clarified the issue by specifically excluding pilot service from the definition of ''train employee who is engaged in commuter or intercity rail passenger transportation.'' See § 228.3.

Section 228.405 Limitations on Duty Hours of Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation

This section provides the substantive limitations on the duty hours of train employees subject to this subpart.

Paragraphs (a)(1) and (a)(2) of this section establish the maximum time on duty in a duty tour and the required minimum time off duty in a 24-hour period. These limitations are substantively identical to the statutory requirements of 49 U.S.C. 21103(a)(1) and (a)(2) as they existed prior to July 16, 2009, the effective date of the amendments to that section made by the RSIA, which requirements currently still apply to train employees engaged in commuter or intercity rail passenger transportation, until the effective date of this regulation. As these provisions are substantively identical to their parallel provisions in old section 21103, FRA's prior interpretations of these provisions, as established in FRA's technical bulletins, will continue to apply.[38] FRA retains these limitations as a ''floor'' because there is limited evidence of fatigue-related accidents in operations subject to this rule. Furthermore, an analysis sampling the schedules of train employees now subject to this rule indicates that many of the schedules are not likely to be at risk for producing a level of fatigue at which safety may be compromised. However, FRA is imposing additional requirements to address work schedules that are likely to result in fatigued employees and rest requirements that will minimize cumulative fatigue.

In order to address cumulative fatigue, new requirements are added in paragraph (a)(3) restricting the number of consecutive days or total days in a prescribed period on which an employee may initiate an on-duty period, as discussed below. The changes from the proposed rule to the final rule do not significantly change the time off duty previously proposed to be required by proposed paragraphs (a)(3) and (a)(4), but resolve issues previously identified by FRA and further discussed by a commenter. In the NPRM, paragraphs (a)(3) and (a)(4) of § 228.405 proposed limitations on the number of days that an employee may work, with paragraph (a)(3) providing the limitation for an employee who works one or more Type 2 assignments, and paragraph (a)(4) providing a less stringent, but more complex limitation for an employee who works only Type 1 assignments. Paragraph (a)(3) in the NRPM proposed that an employee who initiates an on-duty period on 6 consecutive calendar days including one or more Type 2 assignments must have at least 24 consecutive hours off duty at the employee's home terminal. Paragraph (a)(4) in the NRPM proposed that after an employee has initiated on-duty periods in a period of 14 consecutive calendar days and has not had a total of at least two calendar days within that 14-day period in which the employee has not initiated an on-duty period, the employee must have two consecutive calendar days without initiating an on-duty period at the employee's home terminal.

Recognizing the potential interaction between the proposed paragraphs (a)(3) and (a)(4), FRA provided an example in the NPRM of how the consecutive-days provisions would apply if an employee initiated a Type 2 assignment after

[38] Similarly, paragraphs (b) and (c) of the rule are substantively identical to their parallel provisions, paragraphs (b) and (c) of the old section 21103. As with paragraphs (a)(1) and (a)(2), FRA's prior interpretations of these provisions continue to apply.

having initiated only Type 1 assignments in a period of more than 6 but less than 14 consecutive calendar days. FRA indicated that if an employee initiated only Type 1 assignments for a period of more than 6 consecutive calendar days but fewer than 14 consecutive calendar days on which the employee has initiated an on-duty period, and then initiated a Type 2 assignment—for example, a Type 2 assignment on the eighth consecutive day after having worked Type 1 assignments on the previous 7 days—the ''Type 2'' limitation will apply at that time, and the employee must have 24 consecutive hours off duty following the Type 2 assignment (or work or deadhead to the home terminal the next day and then have 24 hours off duty at the home terminal) and then begin a new period of consecutive days upon returning to duty.

However, as was discussed above in Section V, Response to Public Comments on the NPRM, FRA received a comment pointing out that if an employee had initiated an on-duty period in a Type 1 assignments each day for 13 consecutive days, and then initiated a Type 2 assignment on the 14th day, it would not make sense for the employee to have only 24 hours off duty, when 2 consecutive calendar days without initiating an on-duty period would have been required had the employee worked a less fatiguing Type 1 assignment on the 14th day. The consolidation of proposed paragraphs (a)(3) and (a)(4) into new paragraph (a)(3) addresses this concern by including the restriction on more than six consecutive days including a Type 2 assignment in the same at-most 14-day period applicable to Type 1 assignments, as discussed in more detail below. FRA has also rephrased the requirements into a positive statement of when additional time off duty is required, rather than negatively expressing when an employee may not work. FRA also clarified the nature of the ''14-day period.'' For the vast majority of circumstances considered by FRA, the rest required under the consolidated paragraph (a)(3) will not differ from the rest required under the proposed paragraphs (a)(3) and (a)(4). By including the limitation on consecutive assignments including at least one Type 2 assignment within the broader limitation of the at-most 14-day period, the consolidation provides a clearer set of rules to govern how much time off duty is required when an employee works a Type 2 assignment after having worked a series of Type 1 assignments late in the at-most 14-day period. The revisions will also relieve railroads and employees from having to determine, on a daily basis, how many days have elapsed since the beginning of the at-most 14-day period in order to determine how much time off duty is required if a Type 2 assignment is worked on that day.

As a general rule, the application of the cumulative-fatigue provisions has not changed from the NRPM. As proposed in the NPRM and as adopted in the final rule, if an employee initiates an on-duty period each day for 14 consecutive calendar days, or 13 days out of the 14 consecutive calendar days, even if all of those assignments are Type 1 assignments, that employee must have at least 2 consecutive calendar days on which he or she does not initiate an on-duty period at his or her home terminal. As proposed in the NRPM and as adopted in the final rule, if an employee initiates an on-duty period for 6 consecutive calendar days, including one or more Type 2 assignments, that employee must have at least 24 consecutive hours off duty at his or her home terminal. Similarly, in both the proposed and the final versions of the cumulative-fatigue provisions, flexibility is provided to allow the employee to return to his or her home terminal, if necessary, before taking the required rest. The only clarifying change that the final rule makes is that both the 24-hour and 2 consecutive calendar day off-duty periods can be applicable within a series of at most 14 consecutive calendar days; when this occurs, to the extent that the rest periods overlap, they do so concurrently, rather than consecutively.

Paragraph (a)(3) of the final rule now provides a series of at most 14 consecutive calendar days as the frame of reference regardless of whether the employee initiates Type 1 assignments, Type 2 assignments, or some combination thereof. As was implied in the NRPM, the final rule's paragraph (a)(3)(i) now makes explicit that the first series of at most 14 consecutive calendar days begins at a fixed date: the first calendar day on or after the compliance date, as specified in section 228.413, for paragraph (a)(3) that the employee initiates an on-duty period. A series of at most 14 consecutive calendar days ends either (1) after the employee has had two calendar days without initiating an on-duty period or (2) after the 14th consecutive day, whichever comes first. When a series of at most 14 consecutive calendar days ends, the next series of at most 14 consecutive calendar days begins when the employee next initiates an on-duty period. Once a new series has begun, it is not necessary to look back at a prior series to find a day on which an on-duty period was not initiated. For instance, if an employee begins a series of at most 14 consecutive calendar days on May 1, and he or she does not initiate an on-duty period on May 4 and May 9, the series beginning on May 1 ends on May 9. If the employee next initiates an on-duty period on May 10, a new series begins on May 10, potentially extending as far as May 23. The series beginning May 10 will not end before May 23 unless the employee has two days in the period between May 10 and May 23 on which the employee does not initiate an on-duty period.

If the employee, at any point in the at-most 14-day period, works six consecutive calendar days including a Type 2 assignment, paragraph (a)(3)(ii) requires the employee to have 24 hours off duty before the employee may return to initiate another on-duty period.

If an employee reaches the end of the 14th consecutive day of the at-most 14 day period without having two calendar days on which he or she did not initiate an on-duty period, paragraph (a)(3)(iii) requires the employee to have two consecutive calendar days on which he or she does not initiate an on-duty period before the employee may return to initiate another on-duty period.

Paragraph (a)(3)(iv) establishes that this time off be at the home terminal, and that the employee not be available for any service for any railroad during the time off duty required by paragraph (a)(3). Paragraph (a)(3)(v) provides flexibility to railroads, allowing an employee to receive deadhead transportation to his or her home terminal or to work an additional assignment to the employee's home terminal prior to receiving the required rest.

Some examples may help to illustrate the cumulative-fatigue provisions of paragraph (a)(3) of this section as applied to employees working only Type 1 assignments under paragraph (a)(3)(iii). An employee who initiates an on-duty period each day on 14 consecutive calendar days must have two consecutive calendar days on which he or she does not initiate an on-duty period. Likewise, an employee who initiates an on-duty period on any combination of calendar days during an at-most 14-day period that does not include a total of at least two calendar days when he or she did not initiate an on-duty period within the period (*e.g.,* if the employee had no days or only one day in which he or she did not initiate an on-duty period in the at-most 14-day series), must also have two consecutive calendar days without initiating an on-

duty period. If an employee initiated an on-duty period each day on 6 consecutive calendar days, had one calendar day without initiating an on-duty period, and then initiated an on-duty period for the next 7 consecutive calendar days, finishing the last of these on-duty periods on the 14th or 15th consecutive calendar day, that employee would not have had at least two calendar days in the 14-day period in which he or she did not initiate an on-duty period, and that employee would have to have at least two consecutive calendar days in which he or she does not initiate an on-duty period, before the employee could initiate another on-duty period. However, if an employee initiated an on-duty period for 4 consecutive calendar days, had a calendar day in which he or she did not initiate an on-duty period, then initiated an on-duty period on 3 consecutive calendar days and had another calendar day without initiating an on-duty period, that employee would have had a total of 2 calendar days on which the employee did not initiate an on-duty period in the 14-day period, ending the at-most 14-day period. Because the employee has had two calendar days on which he or she has not initiated an on-duty period in the at-most 14-day period, a new period of at-most 14 days will begin for that employee when he or she next initiates an on-duty period. If that same employee, starting on the next calendar day, initiated an on-duty period for 4 more consecutive calendar days, followed by a calendar day in which the employee does not initiate an on-duty period, the employee has had only 1 calendar day without initiating an on-duty period in the current at-most 14-day period, because calendar days prior to the start of the 14-day period are not counted.

The new paragraph (a)(3)(ii) addresses the time off duty that is required when an employee works a Type 2 assignment at any point in a series of at most 14 consecutive calendar days; the employee is required to have 24 consecutive hours of time off duty at the employee's home terminal after any sequence of six consecutive calendar days each day of which the employee initiates an on-duty period including at least one Type 2 assignment, regardless of when this period of six or more consecutive days falls within the larger at-most 14-day period. This 24 hours off duty under paragraph (a)(3)(ii) must run concurrently with the two consecutive calendar days of not initiating an on-duty period required by paragraph (a)(3)(iii) if an employee also has not had two calendar days on which he or she did not initiate an on-duty period in the fully realized series of 14 consecutive calendar days. In the example provided in the comment on the NRPM discussed above, an employee who initiated an on-duty period in Type 1 assignments each day for 13 consecutive calendar days, and then initiated a Type 2 assignment on the 14th day will be required to have 24 consecutive hours of time off duty before initiating an on-duty period again (as required by paragraph (a)(3)(ii) because the employee has initiated an on-duty period for six or more consecutive days), as well as not initiate an on-duty period for two consecutive calendar days before initiating an on-duty period again (as required by paragraph (a)(3)(iii) because the employee has not had two calendar days without initiating an on-duty period during the 14-day period). To the extent that the required rest periods overlap, they run concurrently, not consecutively.

Although many train employees engaged in commuter or intercity passenger service regularly end their duty tour at their home terminal, FRA recognizes that this will not be the case for all employees, and all railroads, subject to this subpart. The language of paragraph (a)(3)(v) allows the railroad the flexibility to get the employee back to his or her home terminal, while at the same time ensuring that the employee will observe the required rest period at the home terminal. Note that although rest periods of 24 consecutive hours and of two consecutive calendar days without initiating an on-duty period must be at the employee's home terminal, by contrast, a calendar day during the at-most 14-day period ''on which the employee has not initiated an on-duty period'' under paragraphs (a)(3)(i)–(a)(3)(iii) does not have to be at the home terminal.

As was discussed above in Section IV, members of the Working Group expressed concern about these requirements, because the schedule analysis done by the Task Force had indicated a number of situations in which employees who worked consecutive days beyond the limitations proposed by FRA would not exceed the fatigue threshold. However, as also stated above, FRA still believed the limitations were appropriate, based on accepted fatigue science indicating that work on successive days increases the risk of accidents as the number of successive days of work increases, and because of the likelihood that an employee working an indefinite number of consecutive days will eventually attend to other activities during time that a fatigue model would consider available for rest.

FRA accommodated the concerns of Working Group members in revising the draft proposed definition of ''Type 2 assignments'' as discussed above. In addition, the cumulative-fatigue provisions of paragraph (a)(3) as they apply to employees working only Type 1 assignments allow employees to work two consecutive hold downs (allowing the employee to exercise seniority to select and work the full cycle of two separate 6-day or 7-day schedules for which the incumbent employee is on vacation or otherwise unavailable), before being required to have two consecutive days at the employee's home terminal without initiating an on-duty period. This flexibility eliminates some potential conflict with existing operations and agreements.

At the same time, an employee who does not initiate an on-duty period each day for the maximum number of consecutive days will be able to restart the series of 14 consecutive days after having accumulated two calendar days in which the employee does not initiate an on-duty period, as provided in paragraph (a)(3)(i). This language eliminates a concern that the railroad and the employee would have to look back each day during any series of 14 consecutive calendar days and find that the employee has had two calendar days without initiating an on-duty period during each of those previous 14-day periods to be in compliance.

Paragraph (b) of this section describes how various periods of time are counted for the purpose of determining total time on duty. This paragraph is substantively identical to the provisions for determining time on duty in 49 U.S.C. 21103(b), which were unchanged by the RSIA. Therefore, these provisions are currently in effect for train employees of commuter and intercity passenger railroads, as well as for other train employees. FRA recognizes that any change in these provisions would require significant changes for the industry in operations and recordkeeping. FRA does not believe that there is any reason to change these provisions at the present time.

Paragraph (c) of this section allows a train employee to work additional hours in emergency situations. This paragraph is substantively identical to the ''emergency'' provision of 49 U.S.C. 21103(c), which was unchanged by the RSIA.

As provided by § 228.413, paragraphs (a)(1), (a)(2), (b), and (c) are effective on and after October 15, 2011. The limitations provided by paragraph (a)(3) are generally effective beginning on the

date that is 180 days after the effective date of this final rule, to give railroads time to complete their analysis of their work schedules. See discussion under § 228.407. A further delayed compliance date of 545 days after the effective date of this final rule is provided for railroads engaged in tourist, scenic, historic, or excursion rail passenger transportation, as discussed above in Section V, Response to Public Comments on the NPRM.

Section 228.407 Analysis of Work Schedules; Submissions; FRA Review and Approval of Submissions; Fatigue Mitigation Plans

This section requires a railroad subject to this subpart to analyze the schedules that the railroad intends its employees subject to this subpart to work, to identify those schedules at risk for fatigue violating the fatigue threshold, and to report to FRA in certain circumstances.

Paragraph (a) requires the railroads to analyze one work cycle, of each schedule, using a valid biomathematical model of performance and fatigue, to determine whether the fatigue risk posed by the schedule violates the fatigue threshold. A work cycle is the cycle within which the schedule repeats. For example, if a schedule called for an employee to work Monday through Friday from 8 a.m. until 4 p.m., with Saturday and Sunday off, and then report again Monday at 8 a.m., the work cycle is the Monday to Sunday schedule that then repeats. Other schedules on some railroads may operate over a two-week period, with certain days off within the two-week cycle. Some schedules do not require analysis, as provided by paragraph (g), discussed below.

Based on this analysis, the railroad is required to identify those schedules at risk for resulting in a level of fatigue that would violate the fatigue threshold. To the extent possible, the railroad is required to apply fatigue mitigation tools identified in the railroad's fatigue mitigation plan (including, but not limited to, those tools described in Section IV above) to mitigate the fatigue risk in those schedules to a level that does not violate the fatigue threshold. If the railroad is unable to mitigate the risk for fatigue presented by a particular schedule to the point that it no longer violates the fatigue threshold, and the schedule cannot be modified to reduce the fatigue risk sufficiently, then the railroad must make a determination that the fatigue risk cannot be sufficiently mitigated to bring it within the fatigue threshold, but that the schedule is operationally necessary. Any schedule that has been identified as having a risk for fatigue that violates the fatigue threshold must be reported to FRA within 180 days after the effective date of the final rule, with an extension to 545 days after the effective of the final rule for tourist, scenic, historic, and excursion railroads, as specified by § 228.413.

Paragraph (b) of this section provides further details as to the requirements and procedures for submission of schedules and other information to FRA for review by the applicable compliance date.

A railroad must submit to FRA those schedules for which it has mitigated the fatigue risk so that it no longer violates the fatigue threshold, along with the fatigue mitigation tools it applied to each particular schedule to reduce the fatigue risk.

A railroad must also submit to FRA those schedules for which it is unable to mitigate the fatigue risk to a level that does not violate the fatigue threshold, but which the railroad has determined are operationally necessary. A railroad must also submit the fatigue mitigation tools that the railroad applied to each schedule, if any, to reduce its fatigue risk even if it could not be reduced to the point that it no longer violated the fatigue threshold. Finally, a railroad must submit the basis for its determination that each schedule is operationally necessary.

If a railroad performs the required analysis of its schedules and determines that none of its schedules presents a risk for a level of fatigue that violates the fatigue threshold and requires transmittal to FRA, the railroad must submit a declaration that it has performed the required analysis and determined that none of its schedules violate the fatigue threshold, and therefore none are required to be submitted.

FRA will review the submissions, and will notify the railroad if the agency takes any exception to the submitted information within 120 days of FRA's receipt of the submission. Railroads are required to correct any deficiencies identified within the time frame specified by FRA. FRA expects that it will work with a railroad to address any concerns with the schedules, mitigation tools, or determinations of operational necessity, and does not intend to dictate how a schedule must be modified.

FRA will also audit each railroad's work schedules and mitigation tools every two years to ensure compliance with the requirements of this section.

Paragraph (c) of this section provides a railroad's options with regard to the use of a biomathematical model of performance and fatigue. Paragraph (c)(1) provides that a railroad may submit to FRA's Associate Administrator for approval evidence of the scientific validation of any biomathematical model of performance and fatigue that it wishes to use for the analysis required by this section. Decisions of the Associate Administrator regarding the validity of a model are subject to review as provided by 49 CFR 211.55.

Paragraph (c)(2) provides that a railroad may use a model that has already been approved, and further provides that FRA has approved the use of both the FAST model and the FAID model, both of which are discussed in Section III above, for the analysis required by this section. FRA has added language to this paragraph to specify the thresholds for FAST and FAID for the purposes of compliance with this regulation. In addition, the paragraph now indicates that versions of FAST and FAID besides those specifically identified in the paragraph must be submitted to FRA for approval prior to use, under the procedures provided by paragraph (c)(1) for approval of a new model.

Paragraph (c)(3) has also been added to this section, to provide that if a new model is submitted to FRA for approval, pursuant to paragraph (c)(1) of this section, FRA will publish notice of the submission in the **Federal Register**, and will provide an opportunity for comment, before the Associate Administrator makes a final determination as to its approval or disapproval. If the Associate Administrator approves a new model as having been validated and calibrated, so that it can be used for schedule analysis in compliance with this regulation, FRA will also publish notice of this determination in the **Federal Register**.

Paragraph (d) of this section requires a railroad that changes its schedules to analyze certain of those schedules and submit them to FRA for approval.

Paragraph (d)(1)(i) requires a railroad to analyze and submit for approval any schedule that has been changed such that it would differ from the parameters of any schedule that had been previously analyzed and approved. In other words, a railroad does not have to submit a revised schedule to FRA if it is the same as any of its schedules that had been previously approved, or if it is a schedule that would not have had to be analyzed or submitted if it were an original schedule.

Specifically, if a schedule is revised so that it is now the same as another schedule that has previously been submitted to and approved by FRA, that

schedule does not have to be analyzed or submitted. A railroad also does not have to analyze or submit any schedule that, as revised, is wholly within the hours of 4 a.m. to 8 p.m. (a Type 1 schedule, which FRA considers per se to present an acceptable level of risk for fatigue that does not violate the fatigue threshold). A railroad is also not required to submit a schedule that, as revised, is now the same as another schedule that includes time outside the 4 a.m. to 8 p.m. hours, but that the railroad analyzed and found not to violate the fatigue threshold, and that does not include any time between midnight and 4 a.m. (because such a schedule would qualify for treatment as a Type 1 assignment).

However, any revised schedule that includes time outside the hours of 4 a.m. to 8 p.m. that is not either the same as a schedule previously approved, or the same as a schedule previously analyzed and found not to violate the fatigue threshold and not including any time between midnight and 4 a.m., has to be analyzed by the railroad. Further, a railroad must submit to FRA any revised schedules that, when analyzed, are found to violate the fatigue threshold, along with the fatigue mitigation tools that the railroad has applied to mitigate the fatigue risk in those schedules to a level that does not violate the fatigue threshold. In addition, if the railroad analyzes a revised schedule and finds that it cannot be mitigated so that the risk for fatigue does not violate the fatigue threshold, but is operationally necessary, the railroad must submit the schedule, along with any fatigue mitigation tools that have been applied, and the railroad's determination of the operational necessity of the schedule and the basis for that determination.

Paragraph (d)(1)(ii) of this section requires a railroad to analyze any revised schedule that has been altered to an extent that employees working the schedule may be at risk of experiencing a level of fatigue that violates the fatigue threshold. This means that the railroad must analyze a schedule that previously was not at risk of violating the fatigue threshold but that may be at risk as revised. If such a revised schedule is in fact found to violate the fatigue threshold, the fatigue risk must be mitigated or the schedule determined to be operationally necessary, just as in the initial analysis required by paragraph (a) of this section.

In addition, any schedules that were previously found to violate the fatigue threshold and either mitigated or found to be operationally necessary also have to be analyzed when those schedules are changed, and submitted to FRA for approval if the revised schedule violates the fatigue threshold. Even though the schedule was already known to present a fatigue risk, the level of risk presented by the schedule as revised could increase or decrease, and different mitigations may be warranted, or the determination of operational necessity could be different, depending on the level of fatigue risk, as that determination is based on balancing the necessity with the risk. Therefore, FRA review of these revised schedules, along with the relevant fatigue mitigation tools or determinations of operational necessity, is required.

Paragraph (d)(2) of this section requires that revised schedules and supporting documentation that are required to be submitted to FRA must be submitted as provided by paragraph (b) of this section, as soon as practicable prior to the use of the new schedule. Some railroads expressed the concern that work schedule changes are sometimes not finalized until shortly before the schedules are to begin operation, and the FRA approval process could delay work schedule implementation and published timetable changes. However, the regulatory language does not require FRA approval before a new schedule may begin operation, just that it be submitted as soon as practicable prior to use. In addition, given the limited nature of the schedules that require FRA review, FRA would expect some degree of advance planning for those kinds of schedules, so that the fatigue implications of the revised schedules can be fully understood by the railroad, as well as by FRA. FRA has added paragraph (d)(3) to provide that FRA will respond to any submissions of revised schedules as soon as practicable, depending on the number and complexity of the revisions submitted, and that railroads are required to correct any deficiencies identified by FRA within the time frame specified by FRA in its response. FRA expects to work with the railroad to resolve any concerns about schedules, mitigation tools and determinations of operational necessity, and does not intend to dictate how a schedule must be modified.

In addition, some APTA members also expressed concern about compliance with the requirements of this paragraph for special trains that they are sometimes called upon to operate. Many special events require advance notification and planning. For those events of which the railroad does not have advance notice, FRA will address those situations and work with the railroad on a case-by-case basis.

Paragraph (e) of this section requires a railroad to have and comply with a written fatigue mitigation plan, to mitigate the potential for fatigue in its work schedules, identified through the analysis required by paragraphs (a) and (d) of this section. The railroad is required to review the plan every two years and update it as necessary.

Paragraph (f) of this section requires a railroad to consult in good faith with its directly affected employees and any labor organization representing them, on the analysis of work schedules, selection of mitigation tools, and any submissions to FRA required by this section. If the railroad and its affected employees or their labor organization cannot reach consensus on any of those items, the employees or labor organizations may file a statement with FRA's Associate Administrator, explaining their views on any issue on which consensus was not reached. Any such statements will be considered by FRA during the review and approval of any submissions required by this section.

Paragraph (g) of this section allows a railroad not to analyze certain schedules that categorically do not present an unacceptable level of risk for fatigue that violates the fatigue threshold. FRA considers a Type 1 assignment to present an acceptable level of risk for fatigue that does not violate the fatigue threshold. Therefore, such schedules do not have to be analyzed according to paragraph (g)(1). In addition, FRA also considers it acceptable for railroads to make an indirect determination that a Type 2 assignment presents an acceptable level of risk for fatigue that does not violate the fatigue threshold if it is no longer in duration than, and fully contained within, the schedule of another Type 2 assignment that has already been analyzed and determined to present an acceptable level of risk for fatigue that does not violate the fatigue threshold. As a result, these schedules would not require further analysis. The daily schedule of such an indirectly analyzed assignment must be fully contained or ''nested'' within the same daily schedule of the previously analyzed assignment. If any mitigations were applied to the previously analyzed schedule to make this determination, the same or more effective mitigations must also be applied to the indirectly analyzed schedule to ensure that it is at least as safe. In other words, FRA will accept the results of an analysis performed of a schedule with identical or greater risk for fatigue that does not violate the fatigue threshold. For instance, if a tourist railroad operated a train from 11 a.m. to 8:30 p.m. with an

hour and a half break, and that schedule did not pose an unacceptable level of risk for fatigue and does not violate the fatigue threshold, a similar schedule operating from 1 p.m. to 8:30 p.m. would also be deemed to present an acceptable level of risk for fatigue that does not violate the fatigue threshold, provided that if any mitigations were applied to the first schedule to make this determination, the same or more effective mitigations were applied to the second. FRA believes that this added flexibility will allow railroads to make determinations of whether schedules are acceptable in a more timely and cost-effective manner.

Section 228.409 Requirements for Railroad-Provided Employee Sleeping Quarters During Interim Releases and Other Periods Available for Rest Within a Duty Tour

This section provides that any rest facilities provided by a railroad for the use of its employees during periods of interim release or other periods during a duty tour must be ''clean, safe, and sanitary,'' and give the employee ''an opportunity for rest free from the interruptions caused by noise under the control of the'' railroad. This section is consistent with statutory language for sleeping quarters at 49 U.S.C. 21106, including sleeping quarters provided for the use of employees during the required minimum off-duty period.

Paragraph (b) of this section provides that if the facilities are proposed as a fatigue mitigation tool, for the purpose of mitigating fatigue identified by the schedule analysis required by § 228.407, then those facilities are subject to the requirement in § 228.407(f), that the railroad consult with affected employees and labor organizations.

Section 228.411 Training

This section establishes training requirements for this rule. FRA believes this provision is especially important because the schedule analysis and fatigue mitigation required by other sections of this rule have little meaning if employees are not aware of the level of fatigue predicted to occur as a result of their work schedule, and the mitigation tools available to the employee to reduce the fatigue risk. For example, suppose that a railroad submits a schedule to FRA for approval that violates the fatigue threshold, but as a mitigation tool, the railroad indicates that it will provide facilities and allow employees working that schedule to take a nap during a two-hour break between scheduled trains, and that the insertion of a nap at that point decreases the fatigue level so that the threshold is no longer violated. If the employee working that schedule does not realize that his or her work schedule violates the fatigue threshold (which is a level of fatigue at which, according to the model, safety may be compromised), or is unaware of facilities and policies allowing the employee to take a nap, or is unaware of the beneficial effect of the nap on the predicted fatigue level, then the employee will not take advantage of the mitigation tool purported to reduce the fatigue risk in that schedule, and the risk will not actually be reduced. Employees who are not currently working assignments that violate the fatigue threshold will also benefit from the training required by this section, as it may raise awareness of, and provide strategies for addressing, other circumstances in their lives that contribute to their actual level of fatigue that are not accounted for in work schedule analysis. The training requirements in this rule were the subject of extensive discussion within the Working Group, and members of the Working Group recommended the content of training, as well as the training interval.

Paragraph (a) of this section requires, as a general rule, that railroads subject to this subpart provide training to employees subject to this subpart and their immediate supervisors. Paragraph (b) of this section lists the minimum subjects that must be covered in training, based on the most current available scientific and medical research and literature. Although the subjects to be covered are quite broad, the specific information to be covered may change over time based on scientific developments or changes in a railroad's operations that may make additional topics appropriate. The format of the required training is not prescribed, as FRA specifically intends to allow each railroad the flexibility to provide training at a level of formality and complexity that is appropriate to its operations and the needs of its employees. Options include, but are not limited to, classroom training, computer-based training, review of written materials, and oral job briefings. Railroads may also combine this training with other training provided to their employees.

Paragraph (c) of this section requires that training be provided to existing affected employees no later than December 31, 2012. Based on comments received, this is a change from the NPRM, which had proposed to require training as soon as practicable. The revised deadline for initial training provides greater certainty, and allows railroads to schedule the training in their normal cycle. Training is required to be provided to new employees hired after December 31, 2012, before they first work a schedule for the railroad that is subject to analysis under this subpart. Although the NPRM had proposed to require that new employees receive training within 90 days after they work a schedule subject to analysis, the provision has been revised in the final rule to be consistent with the latest version of FRA's forthcoming training standards (a separate rulemaking), as members of the Working Group requested that the interval in this rule be consistent with the training standards.

Paragraph (d) of this section requires refresher training at least every three years, and when significant changes are made to the railroad's fatigue mitigation plan or to the available fatigue mitigation tools applied to an employee's assignment or to assignments at the location where the employee works. Railroads also have the flexibility to select an appropriate method of providing refresher training, which will likely be less detailed, and could also be less formal, than the initial training provided to an employee, depending on the extent of any new information to be presented.

Paragraph (e) of this section requires a railroad to keep records of each employee provided training and to retain these records for three years.

Paragraph (f) of this section provides an opportunity for tourist, scenic, historic, and excursion railroads to be excluded from the duty to comply with this section. The exclusion is available to such a railroad if its train employees subject to this rule are assigned to work only schedules that are wholly between the hours of 4 a.m. and 8 p.m. on the same calendar day, and that comply with the provisions of § 228.405, if the railroad provides written notice to FRA. Such a notice is required to help FRA ensure that the exclusion is exercised only by those railroads eligible for it in fact and not by inadvertence. FRA expects that most tourist, scenic, historic and excursion railroads will have schedules that do not violate the fatigue threshold and do not have to be mitigated, and that these railroads will submit a declaration of such to FRA pursuant to § 228.407(b)(2). Unfortunately, that declaration does not serve the same purpose as a declaration under this paragraph, because the former could include schedules having time outside the hours of 4 a.m. and 8 p.m. that have been analyzed and do not violate the fatigue threshold. Railroads operating schedules outside those hours

are not eligible for the conditional exclusion provided by this paragraph.

Section 228.413 Compliance Date for Regulations; Exemption From Compliance With Statute.

This section provides, that, in general, the railroads subject to this subpart must comply with this subpart and associated recordkeeping requirements, with respect to their train employees who are engaged in commuter or intercity rail passenger transportation, beginning April 12, 2012. However, some provisions governing the hours of service of these employees go into effect for all railroads subject to this subpart on October 15, 2011, specifically §§ 228.401, 228.403, 228.405(a)(1)–(2), (b), and (c), and 228.409 (a).

As an exception to this general principle, all railroads providing tourist, scenic, historic, or excursion rail passenger transportation subject to this subpart are not required to comply with the provisions of the subpart with which they would otherwise be required to comply on and after April 12, 2012 until April 13, 2013. As was discussed in Section V, Response to Public Comments on the NRPM, FRA has added this approximately one-year delay of the compliance date to address the concerns of a commenter.

This section also provides that railroads subject to this subpart are exempt from complying with the statutory hours of service requirements currently in effect for them, which are the requirements of 49 U.S.C. 21103 as it was in effect the day before the enactment of the RSIA, and are also exempt from complying with new section 21103, which is 49 U.S.C. 21103 as it was amended by the RSIA effective July 16, 2009. See 49 U.S.C. 21102(c).

VII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures under Executive Orders 12866 and 13563 as well as DOT policies and procedures. The economic impacts of the rule are well under $100 million. FRA has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this rule over a 20-year period. This section summarizes the impacts of the rule.

This regulation is intended to promote safe railroad operations by limiting the hours of service for passenger railroad train employees, and ensuring that they receive adequate opportunities for rest in the course of performing their duties. The main goal of this rulemaking is to identify and reduce fatigue for passenger train employees.

FRA is establishing substantive hours of service regulations, including maximum on-duty periods, minimum off-duty periods, and other requirements, for train employees of passenger railroads. The regulations require that passenger railroads analyze and mitigate the risks for fatigue in the schedules worked by their train employees, and that the railroads submit to FRA the relevant schedules and fatigue mitigation plans for approval. The RSIA established a limit of 276 hours each calendar month for train employees on service performed for a railroad, and a limit of 30 hours on time spent in or waiting for deadhead transportation to a point of final release; increased the quantity of the statutory minimum off-duty period after being on duty for 12 hours in broken service from 8 hours of rest to 10 hours of rest; prohibited communication with train or signal employees during certain minimum statutory rest periods; and established mandatory time off duty for train employees of 48 hours after initiating an on-duty period on 6 consecutive days, or 72 hours after initiating an on-duty period on 7 consecutive days. In absence of a final rule effective before October 16, 2011, passenger railroad train employees would be subject to the more stringent freight hours of service laws described above. Until then, passenger railroads will continue to operate under the hours of service laws in effect in effect prior to the enactment of the RSIA. Thus, issuance of this regulation relieves railroads covered by this rule from becoming covered by the stricter statutory hours of service laws governing freight railroads and their train crews.

The RSIA mandated that in issuing regulations FRA ''consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety and reduce employee fatigue, a railroad's use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees, a railroad's required or voluntary use of fatigue management plans * * *, and any other relevant factors.'' 49 U.S.C. 21109(c). FRA adhered to this mandate. In addition, FRA relied on its RSAC to make recommendations with respect to this rulemaking and this rule reflects the recommendations of this committee.

FRA has analyzed the economic impacts of this rule against a ''no regulatory action'' baseline that reflects what would happen in absence of this rulemaking (*i.e.,* the freight hours of service laws are applied to passenger railroads) as well as a ''status quo'' baseline that reflects present conditions (*i.e.,* primarily, the statutory hours of service provisions (specifically, old section 21103 and, secondarily, the applicable hours of service recordkeeping and reporting regulations) that have and will continue to apply to passenger railroads until they become subject to either the freight hours of service laws on October 16, 2011 or this rule prior to that). With respect to the ''no regulatory action'' baseline, this rule represents a substantially more cost-effective alternative for achieving the goal of identifying and mitigating unacceptable fatigue risk levels and thus ensuring the safety of passenger train operations. Over the 20-year period analyzed, the undiscounted costs associated with the ''no regulatory action'' alternative total $75.5 million compared to $2.1 million for the FRA proposal. Similarly, when discounted at 7 percent, the costs associated with the ''no regulatory action'' alternative total $59.0 million compared to $1.3 million for this rule and when discounted at 3 percent, the costs associated with the ''no regulatory action'' alternative total $66.8 million compared to $1.6 million for this rule. The quantified accident reduction benefits achieved under both the ''no regulatory action'' baseline and this rule total $1.2 million (undiscounted), $0.6 million (PV, 7 percent), and $0.9 million (PV, 3 percent). FRA does not expect that the overall number of casualties and property damages prevented will differ under either scenario. Implementation of this rule would yield these benefits at lower cost. However, there are significant additional potential safety enhancement benefits that may result from the FRA approach. FRA believes that the safety of passenger train operations will be enhanced under this rule as a result of subjecting every crew assignment to a biomathematical analysis either via the analyses conducted while developing the RSAC recommendation or the analyses that will be performed by railroads in the years ahead. The information that railroads will have as a result of this rule regarding fatigue, its causes and symptoms, and its impact on safety will allow them to make crew assignments that take this into consideration and

minimize fatigue beyond the requirements of this rule. FRA is confident that, overall, fatigue awareness training will result in a stronger safety culture that will extend beyond railroad operations, which is a benefit that extends beyond what would result under the freight hours of service law. For instance, safety and health benefits will accrue from the transfer of knowledge to employees, their families, friends and others with whom they may share the fatigue knowledge that they acquire from the required fatigue awareness training programs. This fatigue awareness will result in more optimal decisions regarding rest and sleep, leading to less fatigue and improved safety outside of passenger train operations during the course of daily activities that may include the operation of motor vehicles or other heavy machinery. This fatigue awareness will also result in proper identification and treatment, if necessary, of fatigue symptoms.

With respect to the ''status-quo'' baseline, this rule would impose costs that are higher than the safety benefits that were quantified. Costs compared to the ''status quo'' baseline total $2.1 million (undiscounted), $1.3 million (PV, 7 percent), and $1.6 million (PV, 3 percent). Quantified benefits compared to the ''status quo'' baseline total $1.2 million (undiscounted), $0.6 million (PV, 7 percent), and $0.9 million (PV, 3 percent). However, there are additional benefits that have not been quantified, but should be considered when comparing the overall costs and benefits. For instance, as noted above, FRA believes that the safety of passenger train operations will be enhanced under this rule as a result of subjecting every crew assignment to a biomathematical analysis either via the analyses conducted while developing the RSAC recommendation or the analyses that will be performed by railroads in the years ahead. The information that railroads will have as a result of this rule regarding fatigue, its causes and symptoms, and its impact on safety will allow them to make crew assignments that take this into consideration and minimize fatigue beyond the requirements of this rule. FRA is confident that, overall, fatigue awareness training will result in a stronger safety culture that will extend beyond railroad operations from the transfer of knowledge to employees, their families, friends and others with whom they may share the fatigue knowledge that they acquire from the required fatigue awareness training programs. This fatigue awareness will result in more optimal decisions regarding rest and sleep, leading to less fatigue and improved safety outside of passenger train operations during the course of daily activities that may include the operation of motor vehicles or other heavy machinery. This fatigue awareness will also result in proper identification and treatment, if necessary, of fatigue symptoms. Separately, accident avoidance will result in fewer unplanned delays to passengers and freight commodities impacted by passenger train accident and incidents that result in blocking one or more tracks for prolonged periods. These costs can be very substantial given the need to investigate accidents and often clear wreckage. Finally, there is the non-quantified benefit of ensuring that passenger railroads do not unknowingly require train employees to work schedules with unacceptable high-fatigue risk levels. It is not unreasonable to expect that the unquantified benefits will raise the benefits to a level quite comparable to the costs.

FRA notes that, in addition to the quantified safety benefits that would result from the rule, there are additional unquantified benefits which may result from the implementation of the rule, as discussed above. FRA expects these unquantified benefits to prevent several serious injuries, which may or may not be related to the operation of trains, over the next twenty years; when these benefits are combined with the quantified safety benefits, the benefits are comparable to the quantified costs of the rule.

The table below presents the costs associated with both the ''no regulatory action'' alternative and this regulation.

Cost description	No regulatory action alternative			FRA final rule		
	Undiscounted	PV@7%	PV@3%	Undiscounted	PV@7%	PV@3%
New Engineer Training, Initial (20% New Hires).	$31,237,549	$26,299,825	$28,705,081	0	0	0.
New Engineer Training, Refresher (20% New Hires).	$4,599,050	$2,278,431	$3,327,802	0	0	0.
New Conductor Training, Initial (20% New Hires).	$30,847,974	$25,942,971	$28,330,908	0	0	0.
New Conductor Training, Refresher (20% New Hires).	$8,636,745	$4,278,146	$6,249,071.15	0	0	0.
Work Schedule Analysis (No-Reg Action)/Initial Analysis of Work Schedules + Follow-up Analysis and Fatigue Mitigation Plan Review.	$189,723	$177,312	$184,198	($126,482 + $240,316) = $366,799.	($118,208 + $122,175) = $240,382.	($122,798 + $175,894) = $298,692.
Indirect Determination that Type 2 Schedules are Acceptable (''Nested'' Schedules Reduction.				−$91,700	−$60,096	−$74,673.
Biomathematical Model of Fatigue Software.	0	0	0	$417,500	$268,723	$337,240.
Use of Rest Facilities	0	0	0	$30,988	$28,961	$30,086.
Fatigue Training	0	0	0	$1,312,920	$782,634	$1,025,158.
Fatigue Training (Tourist & Excursion)	0	0	0	$20,000	$12,000	$16,000.
Total (rounded)	$75,511,041	$58,976,685	$66,797,059	$2,056,507	$1,272,605	$1,632,502.

FRA estimates that the recordkeeping and reporting costs per employee record under the no-action alternative and this rule will be practically the same. Under the ''no regulatory action'' alternative, costs for recordkeeping and reporting employee hours of service are reflected in the New Engineer and New Conductor training requirements and the Work Schedule Analysis burden. Under this rule, the costs associated with the recordkeeping and reporting requirements for the substantive hours of service changes are reflected in Fatigue Training as well as the Initial and Follow-up Analysis and Fatigue Mitigation Plan Review.

The estimated benefits of the rule relative to the ''status quo'' baseline, based on the above calculations of potentially prevented accident damages,

injuries, and fatalities, over a 20-year period of analysis are presented below.

INTERCITY PASSENGER, COMMUTER, TOURIST AND EXCURSION RAILROADS

[All track types]

Accident reduction benefits	VSL = $6 M undiscounted benefits	VSL = $6 M discounted PV@ 7%	VSL = $6 M discounted PV@ 3%
Property Damage	$685,915	$348,713	$502,039
Injuries	94,861	48,227	69,431
Fatalities	407,634	207,237	298,358
Total (rounded)	1,188,410	604,177	869,828

FRA does not expect that the overall number of casualties prevented will differ under this rule or the ''no regulatory action'' baseline in which the freight hours of service law would apply to passenger train crews.

After careful consideration of comments received in response to the NPRM, FRA has made modifications to its proposal in the final rule that reduce the overall burden by approximately $100,000 due in equal part to flexibilities added by extending the deadline for fatigue awareness training and the expanded ability to rely on the findings of analyses conducted for other assignments. Nevertheless, since this would not greatly impact the overall conclusions, FRA has not adjusted its quantified cost and benefit estimates for use in this final rule.

B. Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule would not have substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, State and local officials were involved in developing this rule. The RSAC, which was used to assist in the development of this rule, has as permanent members, the AASHTO and the ASRSM.

However, this rule could have preemptive effect by operation of law under a provision of the former Federal Railroad Safety Act of 1970 (FRSA) (49 U.S.C. 20106 (Section 20106)) and the HSL. See Public Law 103–272 (1994) repealing the Federal Railroad Safety Act of 1970 and the HSL and revising and enacting their provisions as positive law in title 49 U.S. Code. The FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to Section 20106. Moreover, the HSL have been interpreted by the Supreme Court as totally preempting the field of the hours of labor of railroad employees. *Erie RR. Co.* v. *New York,* 233 U.S. 671 (1914).

C. Executive Order 13175

FRA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not significantly or uniquely affect tribes and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act and Executive Order 13272

To ensure that the potential impact of this rulemaking on small entities is properly considered, FRA developed this rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

As discussed in earlier sections of this preamble, FRA is establishing hours of service regulations, including maximum on-duty periods, minimum off-duty periods, and other requirements, for train employees providing commuter and intercity rail passenger transportation. The regulations require that commuter and intercity passenger railroads analyze and mitigate the risks for fatigue in the schedules worked by their train employees, and that the railroads submit to FRA for its approval

the relevant schedules and fatigue mitigation plans. This rule also applies to train employees of tourist, scenic, excursion, and historic railroads (tourist and excursion railroads) as well. Issuance of these regulations relieves railroads covered by this rule from being covered by the more strict hours of service laws governing freight train crews.

This regulation is authorized by Section 108(e) of the RSIA (49 U.S.C. 21109(b)) and is intended to promote safe railroad operations by limiting the hours of service for passenger railroad train employees and ensuring that they receive adequate opportunities for rest in the course of performing their duties. The main goal of this rulemaking is to identify and reduce fatigue for the employees covered by the final rule. As described in Section II of this preamble, FRA has based the regulation on scientific research related to fatigue and fatigue abatement, as applied to railroad scheduling practices and operating conditions for train employees of commuter and intercity passenger railroads. FRA is also making conforming changes to existing hours of service recordkeeping requirements.

Federal laws governing railroad employees' hours of service date back to 1907 with the enactment of the Hours of Service Act. Railroads have been subject to the provisions of this Act or successor Federal hours of service laws since it was first enacted. Currently, railroads are subject to the version of 49 U.S.C. 21103 that was in effect the day before the enactment of the RSIA, with respect to their train employees who are engaged in intercity or commuter rail transportation, including tourist and excursion rail operations.

In the NPRM, FRA certified that its proposal would result in ''no significant economic impact on a substantial number of small entities.'' FRA received one response to the NPRM from a small entity directly impacted by its proposal. Strasburg expressed concern regarding a ''Dinner Train'' schedule operated by one of its train crews with an assignment from 11 a.m. to 8:30 p.m., including a 1.5-hour break. Strasburg notes that it ''believes that the analysis required to determine the tranquil nature of these assignments is rooted in common sense and should not require yet an additional regulatory expense of human performance modeling.'' Strasburg further states that it therefore ''believes that it should be exempt from § 228.407 work schedule analysis and that its dinner train assignments should be specifically exempted from the § 228.5 [sic] *Definitions* of a *Type 2 assignment.''* For purposes of assessing the impacts of this final rule on this schedule, FRA analyzed this assignment using the FAST model and found that this Type 2 assignment could be considered a Type 1 assignment and not require any adjustment or mitigation. In fact, based on this analysis, other identical or shorter assignments ending at 8:30 p.m. could also be considered Type 1 assignments and not require any adjustment or mitigation.

To alleviate the impact on small railroads in general, FRA is also extending the effective date of the final rule for all tourist, scenic, historic, and excursion railroads by one year relative to other intercity and passenger railroads. This should allow such railroads more time to perform any necessary analysis of assignments and in some cases to take advantage of any analyses that will have already been performed by larger railroads, to the extent that these are available. This additional time will also allow small railroads to implement any assignment adjustments or other mitigating measures. In addition, FRA is providing an opportunity for tourist, scenic, historic, and excursion railroads to be excluded from the training provisions of this rule. The exclusion is available to such railroads if their train employees subject to this rule only work schedules wholly between the hours of 4 a.m. and 8 p.m. and they provide written notice to FRA. This exclusion should further reduce the burden on small railroads. FRA is certifying that this rule will result in ''no significant economic impact on a substantial number of small entities.'' The following section explains the reasons for this certification.

1. Description of Regulated Entities and Impacts

The ''universe'' of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. In this case, the ''universe'' comprises Class III freight railroads that provide train crews for commuter operations and tourist, scenic, historic and excursion railroads.

''Small entity'' is defined in 5 U.S.C. 601 (Section 601). Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4), likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, Section 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. It provides that the largest a for-profit railroad business firm may be and still classify as a ''small entity'' is 1,500 employees for ''Line-Haul Operating'' railroads, and 500 employees for ''Short-Line Operating'' railroads.[39]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy that formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.[40] Currently, the revenue requirement is $20 million or less in annual operating revenue, adjusted annually for inflation ($30.3 million for 2009). This threshold is based on the Surface Transportation Board's (STB) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.[41] FRA is using the STB's threshold in its definition of ''small entities'' for this rule.

This regulation applies to railroads with respect to their train employees engaged in commuter or intercity rail passenger transportation as well as train employees of tourist and excursion railroads. Intercity passenger railroads include Amtrak and the Alaska Railroad, both of which employ their own train crews and neither of which is considered a small entity. Amtrak is a Class I railroad, and the Alaska Railroad is a Class II railroad. The Alaska Railroad is owned by the State of Alaska, which has a population well in excess of 50,000.

All commuter railroads in operation in the U.S. serve major metropolitan areas with populations higher than 50,000. Although some commuter railroads contract with Amtrak or other entities to operate some or all of their trains, most employ their own train crews.

Train employees of only two small entities that operate trains under

[39] ''Table of Size Standards,'' U.S. Small Business Administration, January 31, 1996, 13 CFR part 121. *See also* NAICS Codes 482111 and 482112.

[40] *See* 68 FR 24891 (May 9, 2003); 49 CFR part 209, app. C.

[41] For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201.

contract for commuter railroads would be covered by this rule, and they are not expected to be impacted significantly. One of these Class III freight railroads with commuter rail train crew schedules will likely modify its schedule by a few minutes each day so that all of its schedules will be considered Type 1 assignments as defined by this rule and thus be determined not to violate the fatigue threshold, thus excluding the railroad from the requirement to analyze those work schedules. Their current train crew assignments would be allowed to continue with a less than 5 minute change. The other Class III freight railroad with commuter train crew schedules would have to evaluate one or two schedules directly using a biomathematical model or indirectly by relying on the determination from another railroad that the same schedule, or a schedule within which it can nest, does not violate the fatigue threshold. Given the small size of the commuter operation, the burden of analysis and training would be small in absolute magnitude and in proportion to the size of their operation. Although this rule imposes some additional recordkeeping burden on these entities for tracking days of consecutive service, the increase would be nominal and proportionate to the extent of their passenger train service, which is quite limited. These train crews are also subject to initial and refresher training no less frequently than every three years. This training must cover the following topics: (1) Physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue; (2) opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders; (3) alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty; (4) opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad; and (5) the effects of abrupt changes in rest cycles for employees. There is flexibility with respect to how the training is delivered (*e.g.,* computer-based training, job briefings, pamphlets, as well as in class instruction). Such training could be accomplished in about one hour initially and 15 minutes triennially per train employee. Small freight railroads operating commuter trains could recoup any costs associated with this rulemaking from the commuter authorities with which they contract.

The requirements of this rule that apply to tourist and excursion railroads are those contained in subpart F, Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation, as well as the conforming changes to the recordkeeping requirements in subpart B. These railroads benefit from a delayed compliance date for the portions of this rule requiring the analysis of schedules and associated recordkeeping requirements. FRA regulates approximately 140 tourist and excursion railroads nationwide. Approximately 130 of these railroads have 15 or fewer covered employees and thus are eligible to be considered for exemption from the limitations that would be imposed under § 228.403. As noted earlier, this particular exemption is substantively identical to the exemption provision of the HSL at 49 U.S.C. 21102(b), which was unchanged by the RSIA, and § 228.403 provides the same opportunity for a railroad to seek an exemption from the requirements of this subpart as a railroad has to seek an exemption from the statutory requirements applicable to its other employees. Additionally, tourist, scenic, historic, and excursion railroads, regardless of size, may be excluded from the requirement to provide training, so long as their schedules are wholly within the hours of 4 a.m. and 8 p.m.

Tourist, scenic, historic, and excursion railroads by virtue of their train service schedules generally have only Type 1 assignments, which categorically do not violate the fatigue threshold, thus excluding the railroads from the requirement to analyze or mitigate most of their schedules. Scheduled assignments that include ''Dinner Train'' operations may be the only schedules impacted by the requirement for analysis or mitigation. Information available regarding train schedules for these railroads indicates that trains do not operate for more than 12 hours on any day, with virtually all train service starting at 10 a.m. or afterward. Dinner trains operate until no later than 10 p.m. and are not in operation every day of the week. They generally operate once a week and in no case more than three days a week. Thus the impact of crew assignment limitations would be minimal. Impacted railroads are likely to be able to rely on the analysis of another railroad due to the delayed compliance date for tourist, scenic, historic, and excursion railroads, as many of their schedules will either be the same as those analyzed by another railroad, or will nest within a longer schedule analyzed by another railroad. In the rare instances where new analysis is required, the railroads may conduct the analysis in-house or contract it out for a nominal fee. Given the similarity of the assignments, the tourist, scenic, historic, and excursion railroads impacted may decide to address the assignments that include ''Dinner Trains'' jointly, either under the auspices of the Tourist Railway Association, Inc. or otherwise. The consecutive-day limitations will likely not impact these railroads since they already accommodate time off for their train crews. Given the very limited train service and the need to accommodate time off now, crew schedules should allow for the proposed time off allowing the consecutive days of service requirements to be met. Since ''Dinner Trains'' are not included in most assignments, the majority of current scheduled train crew assignments would run no later than 6:30 p.m. and thus be considered Type 1 assignments and be unaffected, assuming the consecutive-day limitations do not affect them. Although the modifications to existing recordkeeping requirements will impose some additional net burden on these entities, the increase is nominal and proportionate to the size of their passenger service, which is quite limited. Where these entities are not able to take advantage of the exclusion from the training requirements due to the operation of trains past 8 p.m., they will be required to train their employees as discussed above. The impact of the training requirements will vary in proportion to the size of each operation. Note, however, that the training cost associated with this rule is lower than that associated with complying with the training requirements for the freight hours of service laws.

The limitations on service afford significantly more flexibility to passenger train employees than those imposed by the RSIA on freight train employees. Given that, in absence of a final rule effective by October 16, 2011, passenger train employees would be subject to the more stringent freight hours of service laws (49 U.S.C. 21103), issuance of this rule creates a cost savings for small entities impacted. In addition, the more stringent requirements for schedules of employees who operate trains during the late night hours, in which the fatigue risk is greatest, probably do not affect any tourist and excursion railroads because they do not operate during late night hours.

No shippers, contractors, or small governmental jurisdictions will be directly impacted by this proposal.

2. Certification

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FRA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the current information collection requirements, which affect both passenger and freight railroads, and new information collection requirements and the estimated time to fulfill each requirement are as follows:

49 CFR section or statutory provision	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.11—Hours of Duty Records (Current Requirement)	768 railroads/signal contractors	27,429,750 records.	2 min./5 min./ 10 min.	2,856,125
228.17—Dispatcher's Record of Train Movements (Current Requirement)	150 Dispatch Offices	200,750 records.	3 hours	602,250
228.19—Monthly Reports of Excess Service (Current Requirement But Now includes consecutive days on duty).	300 railroads	2,670 reports	2 hours	5,340
228.103—Construction of Employee Sleeping Quarters—Petitions to allow construction near work areas (Current Requirement).	50 railroads	1 petition	16 hours	16
228.203—Program Components (Current Requirements)—Electronic Recordkeeping—Modifications for Daylight Savings Time.	9 railroads	5 modifications	120 hours	60
—System Security/Individual User Identification/Program Logic Capabilities/Search Capabilities.	9 railroads	1 program w/ security/*etc.*	720 Hours	720
228.205—Access to Electronic Records—(Current Requirement)—System Access Procedures for Inspectors.	768 railroads/signal contractors	100 electronic records access procedures.	30 minutes	50
228.207—Training in Use of Electronic System—(Current Requirements)—Initial Training.	768 railroads/signal contractors	47,000 tr. employees.	1 hour	47,000
—Refresher Training	768 railroads/signal contractors	2,200 tr. employees.	1 hour	2,200
49 U.S.C. 21102(b)—The Federal hours of service laws—Petitions for Exemption from Laws (Current Requirement).	10 railroads	2 petitions	10 hours	20
228.403—Exemption requests from passenger/commuter railroads—(New Requirements).	28 railroads	5 exemption requests.	8 hours	40
—Initial exemption requests from tourist/excursion railroads	140 railroads	10 exempt requests.	2 hours	20
—Renewal exemption requests from tourist/excursion railroads	140 railroads	5 renewal exemption requests.	30 minutes	3
228.407—Analysis of Work Schedules Submissions (New Requirements)	168 railroads	28 analyses	80 hours	2,240
—Reports to FRA of Work Schedules that Violate Fatigue Threshold	168 railroads	20 reports	2 hours	40
—Fatigue Mitigation Plans Submitted to FRA	168 railroads	15 plans	4 hours	60
—Submission of Work Schedules Using Validation Model Violating Threshold that can be mitigated by tools.	168 railroads	15 work schedule submissions.	4 hours	60
—Submission of Work Schedules Using Validation Model Violating Threshold that *cannot* be mitigated by tools.	168 railroads	5 work schedule submissions.	4 hours	20
—RR Determinations of necessary schedules	168 railroads	20 decisions	2 hours	40
—RR Declaration that no work schedule needs to be submitted to FRA for violating fatigue threshold.	168 railroads	148 written declarations.	1 hour	148
—Corrected work schedules, *etc*	168 railroads	2 documents	2 hours	4
—Submission of follow-up analysis by RR due to work schedule change	168 railroads	28 analyses	4 hours	112
—Corrected work schedules, *etc.*	168 railroads	2 documents	2 hours	4
—Updated fatigue mitigation plans	168 railroads	28 plans	4 hours	112
—RR consultations w/employees	168 railroads	28 plans	4 hours	112
—Filed statements w/FRA by employees and employee organizations unable to reach consensus w/RR on work schedules or mitigation tools/ RR submissions to FRA.	RR Employees/Employee Organizations.	5 statements	2 hours	10
228.411—Training Programs (New Requirements)	168 railroads	29 programs	20 hours	580
—Employee Initial Training	168 railroads	10,200 tr. employees.	1 hour	10,200
—Initial Training—New Employees	168 railroads	150 trained employees.	1 hour	150
—Triennial Refresher Training of Employees[42]	168 railroads	n/a	n/a	n/a
—Records of Training	168 railroads	10,350 records	5 minutes	863
—Written Declaration by Tourist Railroads for Exclusion from this Section's Requirements.	140 railroads	100 written declarations.	60 minutes	100
Appendix D: Guidance on Fatigue Management Plans—(New Option)	168 railroads	4 plans	15 hours	60

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292 or Ms. Kimberly Toone at 202–493–6132 or via e-mail at the following addresses: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.*

Organizations and individuals desiring to submit comments on the

[42] The burden associated with this requirement occurs outside the scope of this information collection submission. This burden will occur in the fourth year following the effective date in the

Continued

collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submission@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. Unfunded Mandates Reform Act

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. For the year 2010, this monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This rule will not result in the expenditure, in the aggregate, of $140,800,000 in any one year, and thus preparation of such a statement is not required.

G. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that Federal agencies analyze actions to determine whether the action will have a significant impact on the human environment. This rule will not have a significant impact on the human environment.

H. Privacy Act

Anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 228

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons set forth in the preamble, FRA amends part 228 of chapter II, subtitle B, title 49 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 U.S.C. 103; and 49 CFR 1.49.

■ 2. Section 228.1 is amended by removing the word ''and'' at the end of paragraph (a), removing the period and adding a semicolon in its place at the end of paragraph (b), adding and reserving paragraph (c), and adding paragraph (d) to read as follows:

§ 228.1 Scope.

* * * * *

(d) Prescribes substantive hours of service requirements for train employees engaged in commuter or intercity rail passenger transportation.

■ 3. Section 228.3 is amended by revising paragraph (b) introductory text to read as follows:

§ 228.3 Application.

* * * * *

(b) Except as provided in § 228.401 of this part, this part does not apply to:

* * * * *

■ 4. Section 228.5 is amended by adding definitions of *Associate Administrator, FRA, Type 1 assignment,* and *Type 2 assignment* in alphabetical order to read as follows:

§ 228.5 Definitions.

* * * * *

Associate Administrator means the Associate Administrator for Railroad Safety/Chief Safety Officer, Office of Railroad Safety, Federal Railroad Administration, or any person to whom he or she has delegated authority in the matter concerned.

* * * * *

FRA means the Federal Railroad Administration.

* * * * *

Type 1 assignment means an assignment to be worked by a train employee who is engaged in commuter or intercity rail passenger transportation that requires the employee to report for duty no earlier than 4 a.m. on a calendar day and be released from duty no later than 8 p.m. on the same calendar day, and that complies with the provisions of § 228.405. For the purposes of this part, FRA considers a Type 1 assignment to present an acceptable level of risk for fatigue that does not violate the defined fatigue threshold under a scientifically valid, biomathematical model of human performance and fatigue specified by FRA at § 228.407(c)(1) or approved by FRA under the procedures at § 228.407(c)(2). However, a Type 1 assignment that is delayed such that the schedule actually worked includes any period of time between midnight and 4 a.m. is considered a Type 2 assignment for the purposes of compliance with § 228.405.

Type 2 assignment. (1) *Type 2 assignment* means an assignment to be worked by a train employee who is engaged in commuter or intercity rail passenger transportation that requires the employee to be on duty for any period of time between 8:01 p.m. on a calendar day and 3:59 a.m. on the next calendar day, or that otherwise fails to qualify as a Type 1 assignment. A Type 2 assignment is considered a Type 1 assignment if—

(i) It does not violate the defined fatigue threshold under a scientifically valid biomathematical model of human performance and fatigue specified by FRA at 228.407(c)(2) or approved by FRA under the procedures at § 228.407(c)(1);

(ii) It complies with the provisions of § 228.405; and

rule, which will be addressed in the renewal submission for this information collection.

(iii) It does not require the employee to be on duty for any period of time between midnight and 4 a.m.

(2) If a Type 2 assignment that would normally qualify to be treated as a Type 1 assignment is delayed so that the schedule actually worked includes any period of time between midnight and 4 a.m., the assignment is considered a Type 2 assignment for the purposes of compliance with § 228.405.

■ 5. Section 228.11 is amended by revising paragraph (c) to read as follows:

§ 228.11 Hours of duty records.

* * * * *

(c) *Exceptions to requirements for train employees.* Paragraphs (b)(13) through (b)(16) of this section do not apply to the hours of duty records of train employees providing commuter rail passenger transportation or intercity rail passenger transportation. In addition to the information required by paragraphs (b)(1) through (b)(12) of this section, each hours of duty record for a train employee providing commuter rail passenger transportation or intercity rail passenger transportation shall include the following information:

(1) For train employees providing commuter rail passenger transportation or intercity rail passenger transportation, the date on which the series of at most 14 consecutive calendar days began for the duty tour.

(2) For train employees providing commuter rail passenger transportation or intercity rail passenger transportation, any date prior to the duty tour and during the series of at most 14 consecutive calendar days on which the employee did not initiate an on-duty period, if any.

* * * * *

■ 6. Section 228.19 is amended by adding paragraphs (c)(5) through (8) to read as follows:

§ 228.19 Monthly reports of excess service.

* * * * *

(c) * * *

(5) A train employee, after first initiating an on-duty period each day for 6 or more consecutive calendar days including one or more Type 2 assignments, the last on-duty period of which ended at the employee's home terminal, initiates an on-duty period without having had 24 consecutive hours off duty at the employee's home terminal.

(6) A train employee, after first initiating an on-duty period each day for 6 or more consecutive days including one or more Type 2 assignments, initiates two or more on-duty periods without having had 24 consecutive hours off duty at the employee's home terminal.

(7) A train employee, after initiating on-duty periods on 13 or more calendar days during a series of at most 14 consecutive calendar days as defined in § 228.405(a)(3)(i), the last of which ended at the employee's home terminal, then initiates an on-duty period without having had at least two consecutive calendar days off duty at the employee's home terminal.

(8) A train employee, after initiating an on-duty periods on 13 or more calendar days during a series of at most 14 consecutive calendar days as defined in § 228.405(a)(3)(i), then initiates two or more on-duty periods without having had at least two consecutive calendar days off duty at the employee's home terminal.

* * * * *

Subpart E—[Added and reserved]

■ 7. Subpart E to part 228 is added and reserved.

■ 8. Subpart F to part 228 is added to read as follows:

Subpart F—Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation

Sec.

Subpart F—Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation

§ 228.401 Applicability.

(a) Except as provided in paragraph (b) of this section, the requirements of this subpart apply to railroads and their officers and agents, with respect to their train employees who are engaged in commuter or intercity rail passenger transportation, including train employees who are engaged in tourist, scenic, historic, or excursion rail passenger transportation.

(b) This subpart does not apply to rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

§ 228.403 Nonapplication, exemption, and definitions.

(a) *General.* This subpart does not apply to a situation involving any of the following:

(1) A casualty;

(2) An unavoidable accident;

(3) An act of God; or

(4) A delay resulting from a cause unknown and unforeseeable to a railroad or its officer or agent in charge of the employee when the employee left a terminal.

(b) *Exemption.* The Administrator may exempt a railroad having not more than a total of 15 train employees, signal employees, and dispatching service employees from the limitations imposed by this subpart on the railroad's train employees who are engaged in commuter or intercity rail passenger transportation. The Administrator may allow the exemption from this subpart after a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a railroad to require or allow its train employees to be on duty more than a total of 16 hours in a 24-hour period.

(c) *Definitions.* In this subpart—

Commuter or intercity rail passenger transportation has the meaning assigned by section 24102 of title 49, United States Code, to the terms ''commuter rail passenger transportation'' or ''intercity rail passenger transportation.''

Train employee who is engaged in commuter or intercity rail passenger transportation includes a train employee who is engaged in commuter or intercity rail passenger transportation regardless of the nature of the entity by whom the employee is employed and any other train employee who is employed by a commuter railroad or an intercity passenger railroad. The term excludes a train employee of another type of railroad who is engaged in work train service even though that work train service might be related to providing commuter or intercity rail passenger transportation, and a train employee of another type of railroad who serves as a pilot on a train operated by a commuter railroad or intercity passenger railroad.

§ 228.405 Limitations on duty hours of train employees engaged in commuter or intercity rail passenger transportation.

(a) *General.* Except as provided in paragraph (c) of this section, a railroad and its officers and agents may not require or allow a train employee

engaged in commuter or intercity rail passenger transportation to remain or go on duty—

(1) Unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or

(2) After that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

(3) In a series of at most 14 consecutive calendar days, in excess of the following limitations:

(i) That employee's first series of at most 14 consecutive calendar days begins on the first calendar day that the employee initiates an on-duty period on or after the compliance date for this paragraph (a)(3), as specified in § 228.413. A series of at most 14 consecutive calendar days either ends on the 14th consecutive day or may last for less than 14 days if an employee has accumulated a total of two calendar days on which the employee has not initiated an on-duty period before the beginning of the 14th day of the series. After the employee has accumulated a total of two calendar days on which the employee has not initiated an on-duty period, including at least 24 consecutive hours off duty as required by paragraph (a)(3)(ii) or two consecutive calendar days without initiating an on-duty period as required by paragraph (a)(3)(iii) of this section, during the employee's current series of at most 14 consecutive calendar days, a new series of at most 14 consecutive calendar days begins on the calendar day in which the employee next initiates an on-duty period. Only calendar days after the starting date of a series are counted toward the accumulation of a total of two calendar days on which the employee did not initiate an on-duty period. A calendar day on which an on-duty period was not initiated that occurred prior to the start of the new series, does not count toward refreshing the new series.

(ii) If the employee initiates an on-duty period each day on any six or more consecutive calendar days during the series of at most 14 consecutive calendar days, and at least one of the on-duty periods is defined as a Type 2 assignment, that employee must have at least 24 consecutive hours off duty prior to next initiating an on-duty period, except as provided in paragraph (a)(3)(v) of this section.

(iii) If the employee has initiated an on-duty period each day on 13 or more calendar days in the series of at most 14 consecutive calendar days, that employee must have at least two consecutive calendar days on which the employee does not initiate an on-duty period prior to next initiating an on-duty period, except as provided in paragraph (a)(3)(v) of this section.

(iv) The minimum time off duty required by paragraph (a)(3)(ii) of this section and the at least two consecutive calendar days in which the employee does not initiate an on-duty period required by paragraph (a)(3)(iii) of this section must be at the employee's home terminal, and during such periods, the employee shall be unavailable for any service for any railroad.

(v) Paragraphs (a)(3)(ii)–(iii) of this section notwithstanding, if the employee is not at the employee's home terminal when time off duty is required by paragraph (a)(3)(ii) of this section or calendar days in which the employee does not initiate an on-duty period are required by paragraph (a)(3)(iii) of this section, the employee may either deadhead to the point of final release at the employee's home terminal or initiate an on-duty period in order to return to the employee's home terminal either on the same calendar day or the next consecutive calendar day after the completion of the duty tour triggering the requirements of paragraph (a)(3)(ii) or paragraph (a)(3)(iii) of this section.

(vi) If the employee is required to have at least 24 consecutive hours off duty under paragraph (a)(3)(ii) of this section and not to initiate an on-duty period for at least two consecutive calendar days under paragraph (a)(3)(iii) of this section, both requirements shall be observed. The required periods run concurrently, to the extent that they overlap.

(b) *Determining time on duty.* In determining under paragraph (a) of this section the time that a train employee subject to this subpart is on or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty;

(2) Time the employee is engaged in or connected with the movement of a train is time on duty;

(3) Time spent performing any other service for the railroad during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty;

(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty;

(5) An interim period available for rest at a place other than a designated terminal is time on duty;

(6) An interim period available for less than four hours rest at a designated terminal is time on duty; and

(7) An interim period available for at least four hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

(i) A casualty;

(ii) A track obstruction;

(iii) An act of God; or

(iv) A derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) *Emergencies.* A train employee subject to this subpart who is on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than four additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this paragraph, an emergency ends when the track is cleared and the railroad line is open for traffic.

§ 228.407 Analysis of work schedules; submissions; FRA review and approval of submissions; fatigue mitigation plans.

(a) *Analysis of work schedules.* Each railroad subject to this subpart must perform an analysis of one cycle of the work schedules (the period within which the work schedule repeats) of its train employees engaged in commuter or intercity rail passenger transportation and identify those work schedules intended to be assigned to its train employees, that, if worked by such a train employee, put the train employee at risk for a level of fatigue at which safety may be compromised. Schedules identified in paragraph (g) of this section do not have to be analyzed. A level of fatigue at which safety may be compromised, hereafter called ''the fatigue threshold,'' shall be determined by procedures that use a scientifically valid, biomathematical model of human performance and fatigue that has been approved by the Associate Administrator pursuant to paragraph (c)(1) of this section, or previously accepted pursuant to paragraph (c)(2) of this section. Each work schedule that violates the fatigue threshold must be—

(1) Reported to the Associate Administrator as provided in paragraph (b) of this section, no later than April 12, 2012;

(2) Either—

(i) Mitigated by action in compliance with the railroad's fatigue mitigation

plan that has been approved by the Associate Administrator as specified in paragraph (b) of this section, no later than April 12, 2012; or

(ii) Supported by a determination that the schedule is operationally necessary, and that the fatigue risk cannot be sufficiently mitigated by the use of fatigue mitigation tools to reduce the risk for fatigue to a level that does not violate the fatigue threshold, no later than April 12, 2012; or

(iii) Both, no later than April 12, 2012; and

(3) Approved by FRA for use in accordance with paragraph (b) of this section.

(b) *Submissions of certain work schedules and any fatigue mitigation plans and determinations of operational necessity or declarations; FRA review and approval.* (1) No later than April 12, 2012, the railroad shall submit for approval to the Associate Administrator the work schedules described in paragraph (b)(1)(i) and (ii) of this section. The railroad shall identify and group the work schedules as follows:

(i) Work schedules that the railroad has found, using a validated model (as specified in paragraph (c)(1) of this section or approved by FRA in accordance with paragraph (c)(2) of this section) to present a risk for a level of fatigue that violates the applicable fatigue threshold, but that the railroad has determined can be mitigated by the use of fatigue mitigation tools so as to present a risk for a level of fatigue that does not violate the applicable fatigue threshold. The fatigue mitigation tools that will be used to mitigate the fatigue risk presented by the schedule must also be submitted.

(ii) Work schedules that the railroad has found, using a validated model (as specified in paragraph (c)(1) of this section or approved by FRA in accordance with paragraph (c)(2) of this section), to present a risk for a level of fatigue that violates the applicable fatigue threshold, but that the railroad has determined cannot be mitigated so as to present a risk for a level of fatigue that does not violate the applicable fatigue threshold by the use of fatigue mitigation tools, and that the railroad has determined are operationally necessary. The basis for the determination must also be submitted.

(2) If a railroad performs the analysis of its schedules required by paragraph (a) of this section, and determines that none of them violates the applicable fatigue threshold, and therefore none of them presents a risk for fatigue that requires it to be submitted to the Associate Administrator pursuant to this paragraph, that railroad shall, no later than April 12, 2012, submit to the Associate Administrator a written declaration, signed by an officer of the railroad, that the railroad has performed the required analysis and determined that it has no schedule that is required to be submitted.

(3) FRA will review submitted work schedules, proposed fatigue mitigation tools, and determinations of operational necessity. If FRA identifies any exceptions to the submitted information, the agency will notify the railroad within 120 days of receipt of the railroad's submission. Railroads are required to correct any deficiencies identified by FRA within the time frame specified by FRA.

(4) FRA will audit railroad work schedules and fatigue mitigation tools every two years to ensure compliance with this section.

(c) *Submission of models for FRA approval; validated models already accepted by FRA.* (1) If a railroad subject to this subpart wishes to use a model of human performance and fatigue, not previously approved by FRA, for the purpose of making part or all of the analysis required by paragraph (a) or (d) of this section, the railroad shall submit the model and evidence in support of its scientific validation, for the approval of the Associate Administrator. Decisions of the Associate Administrator regarding the validity of a model are subject to review under § 211.55 of this chapter.

(2) A railroad may use a model that is already accepted by FRA. FRA has approved the Fatigue Avoidance Scheduling Tool™ (FAST) issued on July 15, 2009, by Fatigue Science, Inc. (with a fatigue threshold for the purpose of this regulation less than or equal to 70 for 20 percent or more of the time worked in a duty tour), and Fatigue Audit InterDyne™ (FAID) version 2, issued in September 2007 by InterDynamics Pty Ltd. (Australian Company Number (ACN) 057 037 635) (with a fatigue threshold for the purpose of this regulation greater than or equal to 72 for 20 percent or more of the time worked in a duty tour) as scientifically valid, biomathematical models of human performance and fatigue for the purpose of making the analysis required by paragraph (a) or (d) of this section. Other versions of the models identified in this paragraph must be submitted to FRA for approval prior to use as provided by paragraph (c)(1) of this section.

(3) If a new model is submitted to FRA for approval, pursuant to paragraph (c)(1) of this section, FRA will publish notice of the submission in the **Federal Register**, and will provide an opportunity for comment, prior to the Associate Administrator's making a final determination as to its disposition. If the Associate Administrator approves a new model as having been validated and calibrated, so that it can be used for schedule analysis in compliance with this regulation, FRA will also publish notice of this determination in the **Federal Register**.

(d) *Analysis of certain later changes in work schedules.* (1) Additional follow-up analysis must be performed each time that the railroad changes one of its work schedules in a manner—

(i) That would differ from the FRA-approved parameters for hours of duty of any work schedule previously analyzed pursuant to paragraph (a) of this section; or

(ii) That would alter the work schedule to the extent that train employees who work the schedule may be at risk of experiencing a level of fatigue that violates the FRA-approved fatigue threshold established by paragraph (a) of this section.

(2) Such additional follow-up analysis must be submitted for FRA approval as provided under paragraph (b) of this section, as soon as practicable, prior to the use of the new schedule for an employee subject to this subpart. FRA approval is not necessary before a new schedule may be used; however, a schedule that has been disapproved by FRA may not be used.

(3) FRA will review submitted revised work schedules, and any accompanying fatigue mitigation tools, and determinations of operational necessity. If FRA identifies any exceptions to the submitted information, the agency will notify the railroad as soon as possible. Railroads are required to correct any deficiencies identified by FRA within the time frame specified by FRA.

(e) *Fatigue mitigation plans.* A written plan must be developed and adopted by the railroad to mitigate the potential for fatigue for any work schedule identified through the analysis required by paragraph (a) or (d) of this section as at risk, including potential fatigue caused by unscheduled work assignments. Compliance with the fatigue mitigation plan is mandatory. The railroad shall review and, if necessary, update the plan at least once every two years after adopting the plan.

(f) *Consultation.* (1) Each railroad subject to this subpart shall consult with, employ good faith, and use its best efforts to reach agreement with, all of its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad, on the following subjects:

(i) The railroad's review of work schedules found to be at risk for a level of fatigue at which safety may be compromised (as described by paragraph (a) of this section;

(ii) The railroad's selection of appropriate fatigue mitigation tools; and

(iii) All submissions by the railroad to the Associate Administrator for approval that are required by this section.

(2) For purposes of this section, the term ''directly affected employee'' means an employee to whom one of the work schedules applies or would apply if approved.

(3) If the railroad and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad, cannot reach consensus on any area described in paragraph (f)(1) of this section, then directly affected employees and any such organization may file a statement with the Associate Administrator explaining their views on any issue on which consensus was not reached. The Associate Administrator shall consider such views during review and approval of items required by this section.

(g) *Schedules not requiring analysis.* The types of schedules described in paragraphs (1) and (2) of this paragraph do not require the analysis described in paragraphs (a) or (d) of this section.

(1) Schedules consisting solely of Type 1 assignments do not have to be analyzed.

(2) Schedules containing Type 2 assignments do not have be analyzed if—

(i) The Type 2 assignment is no longer in duration than, and fully contained within, the schedule of another Type 2 assignment that has already been determined to present an acceptable level of risk for fatigue that does not violate the fatigue threshold; and

(ii) If the longer Type 2 schedule within which another Type 2 schedule is contained requires mitigations to be applied in order to achieve an acceptable level of risk for fatigue that does not violate the fatigue threshold, the same or more effective mitigations must be applied to the shorter Type 2 schedule that is fully contained within the already acceptable Type 2 schedule.

§ 228.409 Requirements for railroad-provided employee sleeping quarters during interim releases and other periods available for rest within a duty tour.

(a) If a railroad subject to this subpart provides sleeping quarters for the use of a train employee subject to this subpart during interim periods of release as a method of mitigating fatigue identified by the analysis of work schedules required by § 228.407(a) and (d), such sleeping quarters must be ''clean, safe, and sanitary,'' and give the employee ''an opportunity for rest free from the interruptions caused by noise under the control of the'' railroad within the meaning of section 21106(a)(1) of title 49 of the United States Code.

(b) Any sleeping quarters provided by a railroad that are proposed as a fatigue mitigation tool pursuant to § 228.407(b)(1)(i), are subject to the requirements of § 228.407(f), Consultation.

§ 228.411 Training.

(a) *Individuals to be trained.* Except as provided by paragraph (f) of this section, each railroad subject to this subpart shall provide training for its employees subject to this subpart, and the immediate supervisors of its employees subject to this subpart.

(b) *Subjects to be covered.* The training shall provide, at a minimum, information on the following subjects that is based on the most current available scientific and medical research literature:

(1) Physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue;

(2) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders;

(3) Alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty;

(4) Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad; and

(5) The effects of abrupt changes in rest cycles for employees.

(c) *Timing of initial training.* Initial training shall be provided to affected current employees not later than December 31, 2012, and to new employees subject to this subpart before the employee first works a schedule subject to analysis under this subpart, or not later than December 31, 2012, whichever occurs later.

(d) *Timing of refresher training.* (1) At a minimum, refresher training shall be provided every three calendar years.

(2) Additional refresher training shall also be provided when significant changes are made to the railroad's fatigue mitigation plan or to the available fatigue mitigation tools applied to an employee's assignment or assignments at the location where he or she works.

(e) *Records of training.* A railroad shall maintain a record of each employee provided training in compliance with this section and shall retain these records for three years.

(f) *Conditional exclusion.* A railroad engaged in tourist, scenic, historic, or excursion rail passenger transportation, may be excluded from the requirements of this section, if its train employees subject to this rule are assigned to work only schedules wholly within the hours of 4 a.m. and 8 p.m. on the same calendar day that comply with the provisions of § 228.405, upon that railroad's submission to the Associate Administrator of a written declaration, signed by an officer of the railroad, indicating that the railroad meets the limitations established in this paragraph.

§ 228.413 Compliance date for regulations; exemption from compliance with statute.

(a) *General.* Except as provided by paragraph (d) of this section or as provided in § 228.411, on and after April 12, 2012, railroads subject to this subpart shall comply with this subpart and §§ 228.11(c)(1)–(2) and 228.19(c)(5)–(c)(8) with respect to their train employees who are engaged in commuter or intercity rail passenger transportation.

(b) *Exemption from compliance with statute.* On and after October 15, 2011, railroads subject to this subpart or any provision of this subpart shall be exempt from complying with the provisions of old section 21103 and new section 21103 for such employees.

(c) *Definitions.* In this section—

(1) The term ''new section 21103'' means section 21103 of title 49, United States Code, as amended by the Rail Safety Improvement Act of 2008 (RSIA) effective July 16, 2009.

(2) The term ''old section 21103'' means section 21103 of title 49, United States Code, as it was in effect on the day before the enactment of the RSIA.

(d) *Exceptions.* (1) On and after October 15, 2011, railroads subject to this subpart shall comply with §§ 228.401, 228.403, 228.405(a)(1), (a)(2), (b), and (c), and 228.409(a).

(2) Railroads engaged in tourist, scenic, historic, or excursion rail passenger transportation, subject to this subpart, must comply with the sections listed in paragraph (d)(1) of this section on and after October 15, 2011, but are not required to comply with the other provisions of this subpart and §§ 228.11(c)(1)–(2) and 228.19(c)(5)–(c)(8) until April 12, 2013.

■ 9. Add Appendix D to Part 228 to read as follows:

Appendix D to Part 228—Guidance on Fatigue Management Plans

(a) Railroads subject to subpart F of this part, Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation, may wish to consider adopting a written fatigue management plan that is designed to reduce the fatigue experienced by their train employees subject to that subpart and to reduce the likelihood of accidents, incidents, injuries, and fatalities caused by the fatigue of these employees. If a railroad is required to have a fatigue mitigation plan under § 228.407 (containing the fatigue mitigation tools that the railroad has determined will mitigate the risk posed by a particular work schedule for a level of fatigue at or above the fatigue threshold), then the railroad's fatigue management plan could include the railroad's written fatigue mitigation plan, designated as such to distinguish it from the part of the plan that is optional, or could be a separate document. As provided in § 228.407(a)(2) and (e), compliance with the fatigue mitigation plan itself is mandatory.

(b) A good fatigue management plan contains targeted fatigue countermeasures for the particular railroad. In other words, the plan takes into account varying circumstances of operations by the railroad on different parts of its system, and should prescribe appropriate fatigue countermeasures to address those varying circumstances. In addition, the plan addresses each of the following items, as applicable:

(1) Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature;

(2) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders;

(3) Effects on employee fatigue of an employee's short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions;

(4) Scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss;

(5) Methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research has shown that increased fatigue disrupts employees' circadian rhythm;

(6) Alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty;

(7) Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad;

(8) The increase of the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad or its managers, supervisors, officers, or agents; and

(9) Avoidance of abrupt changes in rest cycles for employees.

(c) Finally, if a railroad chooses to adopt a fatigue management plan, FRA suggests that the railroad review the plan and update it periodically as the railroad sees fit if changes are warranted.

Joseph C. Szabo,

Administrator.

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